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# The Solicitors' Journal

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Town Clerk.

Town Hall, Manchester.
July, 1935.

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# The Solicitors' Journal

VOL. LXXIX. **Saturday, July 6, 1935.** No. 27

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## Current Topics.

### Restoration of "Cuts."

THE question, keenly contested in 1932, whether His Majesty's judges were technically "servants" of the Crown, and as such bound, like others, to submit to the "cut" in their salaries effected by the Order in Council made under the National Economy Act, 1931, has now, by the coming into operation of the concession made by Mr. CHAMBERLAIN in his Budget whereby all "cuts" have been restored, become largely of academic interest only. The concession granted is very welcome not only as evidencing a condition of greater stability in the national finances, but as removing what many considered an unwarranted inroad on the position of the judiciary, whose members, although receiving a nominal salary of £5,000, are in fact receiving an income very much below what each was earning before promotion to the Bench, the increase in dignity being largely offset by that diminished income. Several constitutional writers like Professor BERRIEDALE KEITH took the line that "judges are officers in His Majesty's service, and accordingly their salaries were legally reduced to £4,000 a year for the present under the National Economy Act, 1931," and that "it was absurd to suggest that judges could be affected injuriously by sharing a common sacrifice." This view, as we all know, was not universally accepted, and there is much force in the suggestion that we should adopt the provision contained in the Constitutions of the Australian Commonwealth and of the Irish Free State by which judges' salaries may not be diminished during their tenure of office.

### Business of Courts: Welsh Deputation.

A PETITION organised by *Y Cymbo* and supported by a large number of signatories was presented to the Royal Commission on the Dispatch of Business of Common Law, last Friday week, by a deputation led by Mr. MORGAN JONES. Among the suggestions were the following: Welsh and English should be on terms of equality in the courts, High Court judges, assize officials, county court judges, chairmen of quarter sessions and shorthand writers should be bi-lingual; one Welsh circuit should be established and should embrace Monmouthshire; and county courts should be empowered to deal with disputes involving amounts up to £500. The petition also advocated a reorganisation of the present system to permit justice being administered in Wales more expeditiously by some measure of transfer of cases to the county court.

### Assizes, Sheffield: The Law Society.

A DEPUTATION from Sheffield, consisting of Alderman E. G. ROWLINSON, Mr. ARTHUR MORLEY, K.C., recorder of the city, and Mr. E. B. GIBSON, town clerk, requested that the Commission would make a recommendation that a Commissioner of Assize be instituted for that city. The provision of a new assize circuit constituted for an area including Sheffield, Rotherham, Doncaster and Barnsley, and the petty sessional divisions of Staincross, Strafford and Lower and Upper Tickhill was, it was urged, in the interests of the administration of justice. It was pointed out that the Leeds City Council raised no objection to the proposal. Yorkshire is covered by the North-Eastern Circuit and for assize purposes consists of the North-East Riding Division and the West Riding Division, with centres at York and Leeds, respectively. It was suggested that the last-named Division be sub-divided and Sheffield adopted as a new assize centre. Evidence given by The Law Society indicates that the council of that body is in accord with the views expressed by several members of the High Court Bench that the holding of assizes should be continued as widely as possible, but it was suggested that every endeavour should be made to save as much time as possible and every encouragement given to justices to commit criminal cases to quarter sessions where practicable.

### Judgment Summonses.

WE have more than once in these columns touched upon the subject of imprisonment for debt and referred to various proposals which have been made to eliminate this form of punishment in all cases, except where non-payment is due to a persistent refusal on the part of a person perfectly capable of discharging the obligation. The existing law in regard to judgment summonses under s. 5 of the Debtors Act, 1869, and the practice of the court in regard to the making of committal orders against those who make default in the payment of any debt, or an instalment of any debt, due under an order or judgment were indicated in the course of a statement made by LUXMOORE, J., last Monday. The learned judge pointed out that the court is not at liberty to exercise the jurisdiction conferred upon it by the above-mentioned section of committing defaulters to prison unless it was proved to its satisfaction that the judgment debtor had, when the judgment came before the court, or had since the date of the order or judgment, the means to pay the sum in respect of which he has defaulted. Reference was made to *Dillon* v. *Cuningham*, L.R. 8 Ex. 26, where it was held that it was open to the court, on a judgment summons asking for committal, to make an order for payment of the debt by instalments (the Act, of course, provides for this mode of payment), and that such an order can be made even if the judge is not satisfied of the existence of means, and to *Montgomery* v. *De Bulmer* [1898] 2 Q.B. 420, *Woodham Smith* v. *Edwards* [1908] 2 K.B. 899, and *Re Mitchell*, 54 SOL. J. 252, as indicative of the fact that such an order is often of value to the debtor, since it protects him against execution for more than the instalments in arrear. The whole basis of committal jurisdiction is the punishment of a debtor for wilfully refusing to pay when he has the means to pay (per LORD HALSBURY in *Stonor* v. *Fowle*, 13 A.C. 20, 24): "Accordingly," LUXMOORE, J., observed, "before making a committal order it is essential that the court should

satisfy itself that, in respect of the sums for which the committal order is to issue, it can truly be said that since the respective due dates the debtor has had the means of paying them available, but has neglected to use those means for the purpose of paying them." The committal being a punishment for a proved offence of dishonesty, there is, it was shown, *primâ facie* no reason why it should not issue forthwith. But in cases where it was desirable that a debtor, genuinely desirous of making good his default, should be given an opportunity of doing so, the court may direct the committal order to lie in the office and not to issue if the moneys in respect of which it is made are paid within some named period or are paid by named instalments at named dates. The reason why it is the practice of the High Court always to suspend the operation of the instalment while there is a committal order running is—the learned judge pointed out—that the order presupposes a wilful failure to pay the instalments in respect of which it issues and contemplates that the debtor's future income over the period of suspension of committal will be used to make good this default, and hence is not likely to have during such period any income free to meet instalments which would ordinarily have fallen due for payment therein.

**The Relevance of Future Means.**

THE bearing of a debtor's probable future income upon the questions involved in the exercise of this jurisdiction follows from the principles already outlined and is indicated in the statement of LUXMOORE, J. Where payment is ordered to be made by instalments these should be adjusted in light of the debtor's means, for otherwise default in payment thereof will lack the element of wilful refusal, which is the necessary foundation of a committal order. Future prospects are not material on the hearing of a judgment summons because the Debtors Act, in the words of LUXMOORE, J., "is not intended to enable the court, in effect, to make a charge on the man's future earnings, nor is it intended to furnish the creditor with a convenient and minatory process of execution." In cases where the court directs that the committal order shall lie in the office and shall not issue if the moneys in respect of which it is made are paid as may be directed, the debtor's prospects of future means again become material. But, the learned judge indicated, in the case of a salary earner or wage earner with no other means the prospects he has of future payment are an element for consideration only after the sum for which he is to be committed is fixed, and then only in order that the court may form a view as to what terms of suspension of committal would afford him a reasonable chance of making good his past default so as to avoid imprisonment. It is also to be noted in the case of a salary or wage earner without other means that the sum for which a committal issues must not exceed the total surplus, over the period which has elapsed since the due date of the instalments in arrear, of his salary or wages over the sum reasonably required for the maintenance of himself and his dependents. The statement of LUXMOORE, J., is fully reported in *The Times* of 2nd July.

**Swearing of Affidavits.**

IN this matter, as in so many others, we have improved, let us hope, since the days when DICKENS described the man in spectacles hard at work swearing affidavits produced by a number of clerks, the oath being invariably administered without any effort at punctuation, and usually in the following terms: "Take the book in your right hand this is your name and handwriting you swear that the contents of this your affidavit are true so help you God a shilling you must get change I haven't got it." At least in these days we pay more regard to punctuation in the performance of this function, and that is all to the good. Scots lawyers have, however, often expressed astonishment at the multiplicity of affidavits in use in our courts, and, apparently in the north, justice seems to be administered without much recourse to this method of proof; but there are some matters in which an affidavit is there essential, and to this attention is drawn in the Annual Report of the Council of The Law Society which was presented to the general meeting of the members on 5th July. It appears that although by s. 3 of the Commissioners for Oaths Act, 1889, any oath or affidavit required for the purposes of any court or matter in England may be taken or made in any place out of England before any person having authority to administer an oath in that place, there is no similar statutory or other provision with regard to affidavits required for the purpose of any court or matter in Scotland, the result being that an affidavit required for use there must be sworn before a Justice of the Peace. The Council agree with the suggestion put forward by the City of London Solicitors' Company that it would make for general convenience if such a document could be sworn before a Commissioner for Oaths. This is a very practical reform which might well be given effect to without delay.

**Coroners and Road Safety.**

RESPONDING to a toast at the annual dinner of the Coroners Society of England and Wales, which was held recently at the Holborn Restaurant, Major F. C. COOK, Chief Engineer of the Road Department of the Ministry of Transport, referred to the reduction which had taken place in the number of road accidents during ten weeks ended in the middle of May last compared with the corresponding period of the previous year. Fatal accidents had, he said, been reduced by 14 per cent., and non-fatal accidents by 9½ per cent. This improvement was attributed largely to the safety measures which had been taken, although whether it was due to pedestrian crossings, guard rails or to the thirty miles an hour speed limit could not be determined. It was emphasised that the work of highway engineers lies rather in the adoption of an existing road system, which has grown up without any measure of ordered development, than in new construction, although reference was made to increasing evidence of co-operation on the part of highway authorities in the lay-out of roads in such manner as would tend to enhance public safety, as in the provision of dual carriage-ways, cycle tracks and footpaths. The Minister of Transport, who was unable to be present, sent a message in which he stated that he realised what a heavy burden of duty fell upon coroners in connection with road accidents. They were all engaged in the common task of trying to remove, as far as possible, the causes of accidents. The Minister referred to the great opportunities which coroners have of keeping before the public the manner in which care, courtesy and thoughtfulness could best save life, and of bringing home to road users their mutual obligations, and he expressed his appreciation of the work which coroners were doing in that direction.

**Auctioneers', House Agents' and Valuers' Licences.**

IMPORTANT evidence—much of it advocating changes in the law—has recently been given before a Select Committee of the House of Lords which, under the presidency of LORD MERSEY, is considering the subject of the licensing of auctioneers, house agents and valuers. Mr. CHARLES EASTWOOD, the chairman of the General Produce Brokers' Association, expressed the opinion that there was an absence of abuses in the branch of the profession with which he was concerned because, although there was nothing to prevent anyone trying to sell any form of produce, no one who set up in Mincing Lane as a broker would do any business unless he was known to be of good reputation. A willingness on the part of his association and allied societies to co-operate in supervising the issue of licences was indicated, but it was suggested that it might be dangerous to give any one association power to grant or refuse licences. Doubts whether existing difficulties could be overcome by licensing authorities were expressed by Mr. CHARLES OSTENTON, a past-president of the Auctioneers' and Estate Agents' Institute, although the existing system whereby a convicted felon, an undischarged

bankrupt or a person of the most notorious evil character could obtain a licence as a matter of form was pronounced thoroughly unsound. The Institute would welcome any proposal which would ensure that licences should not be issued to people who could not produce some certificate of character. Alteration of the law to safeguard the granting of licences was advocated by the National Chamber of Trade on behalf of which evidence was tendered by Councillor E. H. ALTMAN, Blackpool, Major H. D. TAYLOR, Southend, and Mr. PATRICK HOWLING, the general secretary. Attention was drawn to the prevalence of "uncatalogued" auction sales which were given an apparent respectability by reason of the fact that the persons conducting them were able to obtain and renew their licences as auctioneers, and so create a favourable impression as to their *bonâ fides* and straightforward dealing. The present law, and in particular the absence of any discretion to refuse the grant of a licence, which is required for revenue purposes only, were referred to by Mr. O. F. DOWSON, legal adviser to the Home Office. The witness pointed out that the holding of a mock auction is an indictable offence. The Home Office was not in a position to say to what extent practices of this character existed, but the infrequence of prosecutions was not due to any difficulty in securing conviction when the facts were proved, but to the difficulty of getting people to come forward to give evidence. It was not thought that the existing criminal law was inadequate to deal with fraudulent practices by unscrupulous persons acting as auctioneers.

**The Society of Auctioneers and Landed Property Agents.**

MR. ARTHUR G. MINTER, president, Mr. JOHN E. MITCHELL, a vice-president, Mr. ERNEST K. HOUSE, a past president and a member of the Council, and Mr. JOHN STEVENSON, the general secretary, attended to substantiate and supplement by oral evidence a memorandum submitted by the Incorporated Society of Auctioneers and Landed Property Agents. The memorandum draws attention to the difference between the statutes of 1806, 1845 and 1861, which deal respectively with licences relating to appraisers, auctioneers and house agents on the one hand, and the Land Agents Act, 1921, and the Auctioneers Act, 1928, both of New Zealand, on the other hand, in that, while the former are of a purely revenue character, the latter also afford protection to the public. Under these last, licences are granted only after magisterial inquiry into the character and financial position of the applicant, and provision is made for cancellation on a licensee's conviction of an offence involving moral turpitude or a dishonouring in the public estimation or, at the court's discretion, upon conviction of any offence affording grounds for cancellation. It is suggested that it should be possible to adopt to some extent both the method and wording of the New Zealand Acts to deal with the situation in Great Britain. In order to meet the position created by the fact that the section of auctioneers who handle goods in bulk (foodstuffs, tea, pepper, fish and the like) conduct a business entirely distinct from that of auctioneers and estate agents concerned with realty or household chattels and agricultural auctioneers, the memorandum submits that—failing any special suggestions that may be made by the Board of Trade or the Ministry of Agriculture—there might in future be two types of licence, one for estate (land) agents and the other for auctioneers of all kinds. Where both types of business are conducted, a combined (reduced) licence fee should be payable. Attention is drawn to the increased number of persons and firms who specialise as "business transfer agents," many of whom, besides possessing no experience in valuation work, frequently have also no financial standing or responsibility. To combat the attendant evils, it is suggested that a person carrying on this type of business should be required to take out a special licence. Moreover, "every person who carries on the calling of an Appraiser or valuer and/or Business Transfer Agent, or in fact makes any valuation of whatsoever kind or description for any fee or reward, or purports to sell or transfer any business, including the goodwill, stock-in-trade, fixtures and fittings upon a valuation basis, shall be compelled to take out a licence in the manner provided." The distinction which at present exists between agents who deal in furnished houses and agents who deal in unfurnished houses is thought to create an anomaly which should be corrected by amending the Revenue Act, 1861, so that any person who carries on the business of an auctioneer and estate agent or engages in the management of property should be required to take out a house agent's licence.

**Control of Licences.**

THE memorandum states that the present system of granting appraisers', house agents' and auctioneers' licences to any and all applicants upon payment of the prescribed duty is open to very grave abuse and is against the interests of the general public. A system of control is advocated based, *inter alia*, upon the character and financial standing of the applicant. The system, which should be simple and not irritating, especially to existing licence holders, should be directed mainly to new applicants, to those permitting a break in their licences and to those against whose business or personal conduct complaint is made from a responsible quarter and substantiated. The suggestion of a central board representative, *inter alia*, of the professional societies, is rejected in favour of the adoption of the existing machinery (with or without modification) relative to bailiffs' certificates on refusal of an application for a licence. It is suggested that the registrar of the county court might be given authority to review such rejection and that there might be a further right of appeal to a county court judge. Provision should be made for the supply of relevant information on application, for the sponsoring of applicants, for the suspension of a licence by the court on conviction of the holder, for the conditional grant of a licence (the applicant being required to enter into sureties to be estreated in the event of misconduct) and for the imposition of penalties sufficient to deter persons who have been refused licences engaging in practice.

**Betting and Lotteries Act, 1934.**

READERS may be reminded that such portions of the Betting and Lotteries Act, 1934, as were not in force came into operation on the first day of the present month. Sections 5–10, 18, 20, 29–31 have been in operation since 16th November, 1934, when the Act was passed. Sections 21–8, which comprise Part II of the Act and relate to lotteries and prize competitions, and s. 32 came into force on the 1st January of the present year, except, as to Part II, in so far as it effects the repeal of any provisions of the Racecourse Betting Act, 1928.

**Recent Decisions.**

In *Faraday* v. *Auctioneers' and Estate Agents' Institute of the United Kingdom* (p. 502 of this issue), EVE, J., held that a verbal arrangement between the plaintiff and a firm whereby gross fees and expenses in connection with quinquennial valuations were shared in regard to properties submitted by the latter to the former, and a similar scheme in regard to the firm's own properties, were inconsistent with article 38 (1) of the defendant's articles of association. The article prohibits members establishing or joining, either as principal or assistant, any commercial firm or undertaking for the purpose of carrying on or assisting to carry on professional business as an adjunct to or in connection with the commercial business of such firm. Claims for a declaration that the rule aforesaid had not been violated and for an injunction to refrain the defendants from acting upon a resolution relating to the suspension and expulsion of the plaintiff in the event of his continuing the above-mentioned arrangement with the firm failed. It was agreed that the operation of the resolution expelling the plaintiff from the institute should be suspended pending a possible appeal.

# The Law relating to Legal Aid and Trade Protection Societies.

II.

(*Continued from p.* 466.)

We have next to consider the position of legal aid societies, that is to say, societies which for profit undertake the conduct of particular contemplated litigation on behalf of persons who become members for that express purpose.

We are not concerned here with institutions which from philanthropic or charitable motives provide free legal assistance; the legality of such bodies is established beyond question, even should they at times be indiscreet in their charity and fail to make proper inquiries into the circumstances of the cases which they take up: see *Harris* v. *Brisco*, 17 Q.B.D. 504.

A legal aid society formed for profit must be very careful to avoid the commission of any acts of maintenance, since, inasmuch as the members join for the express purpose of being assisted in litigation either contemplated or actually commenced, it is clear that such acts cannot be excused by any contract of indemnity. Neither can any common interest between the society and the member be created in such a case by the contract of membership, which would be itself *ex hypothesi* illegal and maintenous. If the society took an assignment of the right of action and agreed to repay the damages recovered to the member after deduction of any share of, or percentage upon, them, it would be guilty of champerty.

It is necessary therefore to consider carefully in what circumstances a society formed for profit will be amenable to a charge of maintenance.

It is submitted that it will be so in each of the following cases:—

(1) If it advances money to a member for the purpose of enabling him to prosecute litigation, even, it seems, if it does not interfere in the conduct of the consequent proceedings by stipulating for the employment therein of a particular solicitor or otherwise.

The cases on this point are unsatisfactory and difficult to reconcile, but the above proposition, it is submitted, correctly represents the present state of the law: *cf. Strachan* v. *Brandon*, 1 Eden 303; *Cockell* v. *Taylor*, 15 Beav. 103; *Myers* v. *United Guarantee Co.*, 7 De G. M. & G. 113; *Cohen* v. *Mitchell*, 25 Q.B.D. 268; *Re Cambrian Mining Co.* 48 L.T. 114; *James* v. *Kerr*, 40 C.D. 449; *Cole* v. *Booker*, 29 T.L.R. 294.

(2) If it stipulates for the employment of a particular solicitor in the proposed litigation and assumes liability to him for his costs and disbursements, whether under a particular retainer or a general retainer for cases of this nature. The nature of the remuneration received by the society from the member is in general quite immaterial on the issue of maintenance, and it cannot escape liability by charging a subscription or entrance fee and attempting in this way to bring itself within the class of lawful debt-collecting agencies; but it is conceivable that if its liability to the solicitor was under its constitution expressly limited to a fixed proportion of any fees actually paid by the member it might not be guilty of maintenance.

(3) Possibly, if the principle enunciated in the judgment of Kay, J., in *James* v. *Kerr*, 40 C.D. 449, is to be rigorously applied, if it merely stipulates for the employment of its own solicitor without assuming any liability to him.

(4) If it agrees to indemnify the member against the payment of damages or costs to the opposite party.

The second proposition is well illustrated by two decisions in regard to next-of-kin agents or "genealogists."

In *Rees* v. *De Bernardy* [1896] 2 Ch. 437, the defendant, a next-of-kin agent, obtained from two ladies in very humble circumstances an agreement that in consideration of his having revealed to them the fact that they were the co-heiresses of an intestate and given them information as to the property to which they were thus entitled, they should pay to him a moiety of such property. The estate in question was then in the possession of the public trustee of New Zealand as administrator appointed by the Supreme Court of that Colony and no litigation was pending in regard to the title. The agreement was set aside on equitable grounds, and also as being in the nature of champerty and contrary to the policy of the law. On the latter question, since, as Romer, J., stated in his judgment, such an agreement for the giving of information in consideration of a share of the property recovered is only void where the person giving the information is himself to recover the property or to actively assist in its recovery by procuring evidence or similar means, it became necessary to consider exactly what was the true agreement between the parties. The learned judge held that in fact it was part of the bargain that the defendant should himself recover the property for the two ladies. Although a show was made of leaving the choice of a solicitor to the ladies, this was a mere farce and the defendant must have known that they would of course retain the solicitor who was usually employed by the defendant in such cases. The costs of this solicitor over and above £40 (which was to come out of the property) would have to be paid by the defendant and the ladies were not to be responsible for, and could not have paid, more themselves. There seemed to have been some general arrangement between the defendant and the solicitor as to his terms for acting in such cases, and in his books he recognised as his principals only the defendant's firm and treated the case as only part of the general account between him and them.

But in the later case of *Wedgerfield* v. *De Bernardy*, 25 T.L.R. 21, where the defendant had made a similar agreement, but the evidence showed plainly that the plaintiff was free to employ any solicitor he chose, although one skilled in the work of tracing next-of-kin was recommended, the Court of Appeal enforced the agreement.

The principles upon which a legal aid society may become liable for maintenance by reason of its relations with a solicitor are clearly indicated in the very careful judgment in the first of the above cases. Since it was only necessary for the actual decision to show that the transaction "savoured of" maintenance and champerty, it follows that if a society can establish that it falls outside the facts of that case, it will *à fortiori* be free from any liability for actual maintenance. Further, since champerty cannot exist without maintenance, it will also be free from any liability for champerty; although, as we shall see, the contract of membership may be unenforceable as "savouring of" maintenance.

In the case of *Grassmoor Colliery Co.* v. *Workmen's Legal Friendly Society* (1912), 1 L.J. (C.C.) 92; Derby County Court, where a legal aid society which gave assistance to members in workmen's compensation cases in consideration of a nominal subscription and a percentage upon the damages recovered, and which introduced members to solicitors who worked for it, but to whom it was clearly understood that it should not be liable for their costs, was held guilty of maintenance and champerty. But it is respectfully submitted that the decision in this case is inconsistent with that of the Court of Appeal in the second *De Bernardy Case*.

It is submitted, on the other hand, that a Society will not be guilty of maintenance if it merely introduces its members to a solicitor who is ready to take up cases at less than the scale costs or on other lawful terms, and itself assumes no liability to him. Even in the early days it seems to have been doubtful if a person was guilty of maintenance if he merely went "along with another to enquire for a man learned in the law" (see Hawkins, P.C., I, 27, 6). It certainly would not be so now in the case of a private individual, and there seems no reason why a legal aid society should be in any worse position.

The form of the payment for the services of such a society will be immaterial upon the issue of maintenance. It may assume the form of a subscription, a cash payment, a fee contingent upon success, or even a share of, or percentage upon, the damages or property recovered. But in the two latter cases it is doubtful whether the society could sue the member to recover the amount payable, since the contract of membership might be held unenforceable as savouring of maintenance and champerty.

(*To be continued.*)

## Solicitation of Customers.

A MATTER upon which an authoritative decision has long been awaited was recently considered in *Wessex Dairies Limited* v. *Smith* [1935] W.N. 79. The defendant in 1922 had become a milk roundsman, and had agreed well and faithfully to serve his employer and his assigns and successors, and also that he would not during the continuance of, nor after quitting, the service interfere with the customers served by the employer or his assigns or successors. The employer subsequently sold his business to the plaintiffs, in whose service the defendant continued for some time. On the last day of his employment, the defendant informed the customers on his round that he was about to set up on his own account, and asked them to transfer their custom to him as from the next day. Many of them did so, and the plaintiffs claimed damages for a breach of the defendant's agreement, or, alternatively, that he was under an implied obligation to serve the plaintiffs with fidelity and to protect their interests in the milk round. Mr. Justice Humphreys gave judgment for the plaintiffs, and awarded them £20 as damages for loss of goodwill. This decision has been affirmed by the Court of Appeal (Lords Justices Greer and Maugham and Mr. Justice Talbot), who held that a servant, during the whole period of his service, is under a duty to serve his employer with fidelity. If, while still in the service of the employer, he asks the customers to transfer their custom, even prospectively, a breach of duty is committed for which the employer can recover damages.

The defendant had appealed in reliance upon *Nichol* v. *Martyn* (1799), 2 Espinasse 732, in which wholesale ironmongers sued their former traveller for seducing their customers. The evidence for the plaintiffs was that, on his last visits to country shopkeepers, the defendant had told them that he was himself going into the same business after Christmas, and would then be obliged to them for an order on his own account. In cross-examination, however, it transpired that the defendant duly took the orders for the plaintiffs on that journey, that the orders were executed on the plaintiffs' account, and that no solicitation was used by the defendant for any order at that time, which might have been supplied by the plaintiffs. On those facts Lord Kenyon, C.J., held that the case was one of *damnum sine injuria*, as the defendant did not solicit the present orders of the customers. On the contrary, he took for the plaintiffs all those he could obtain, and his request of business for himself was prospective, and for a time when the relation of master and servant between him and the plaintiffs would be at an end. The plaintiffs were therefore non-suited, but now—after the lapse of 136 years—the Court of Appeal has laid down that the judgment cannot be accepted as accurately stating the law.

The accuracy of the decision in *Nichol* v. *Martyn*, *supra*, had previously been doubted in *Robb* v. *Green* [1895] 2 Q.B. 1. The plaintiff, who was a dealer in live game and eggs, had farms from which he supplied 150,000 pheasants' eggs a year to estates all over Great Britain. The defendant, being employed as manager, had access to the books, from which he surreptitiously made lists of names and addresses of customers. After leaving the plaintiff's employ, the defendant used the lists to facilitate a canvass for custom, on setting up in business on his own account. The plaintiff claimed damages, and proof that the defendant had copied the order book was obtained from his own answers to interrogatories. The defence was that the employment was not confidential, and, in the absence of express provision, the defendant was not bound to protect his master's interests. Mr. Justice Hawkins observed that the case of *Nichol* v. *Martyn*, *supra*, was strongly relied upon, and added: "It seems presumptuous to criticise or doubt so high an authority, but I cannot help asking myself whether, at the present day, Lord Kenyon, after considering the matter, would have considered it no breach of the duty of a servant deliberately to utilise his hours of service by being false to his master's interests, and endeavouring to induce his master's customers to transfer their custom to him on a near approaching day." Judgment was accordingly given for the plaintiff for £150, and an injunction was also granted. This decision was upheld by the Court of Appeal (Lord Esher, M.R., and Lords Justices Kay and Smith), but no reference was made to *Nichol* v. *Martyn*, *supra*, which accordingly had another forty years' lease of life.

It is to be noted that the assignability of restrictive covenants by milk roundsmen was established in *Baines* v. *Geary* (1887), 35 Ch. D., at p. 159. Mr. Justice North there observed that a point was taken that the benefit of the defendant's covenant was not assignable, whereas it had been held in many cases that the obligation of such a covenant is not limited to the time during which the original covenantee continues to carry on his business.

The plaintiff in the first-named case, *supra*, had entered into a restrictive covenant, but the judgments clearly lay down the principle that an employer is always entitled to fidelity from an employee. The decision should help to dispel an impression (which appears to be current in some quarters) that an employee, who has not entered into a restrictive covenant, does not incur any liability through acting contrary to his employer's interests.

## Company Law and Practice.

**Share Certificates (II).**

I WAS discussing last week some of the cases which illustrate the liability which a company may incur to a person who has *bonâ fide* acted to his detriment upon a share certificate issued by the company without the authority of the true owner of the shares on the faith, for example, of a forged or otherwise fraudulent transfer; a liability based on the principle of estoppel, which itself arises from the circumstance that a share certificate is a declaration of the company to the whole world that the person named therein is a shareholder, and is issued with the intention that it should be used and acted upon on that footing. The simplest instance perhaps is that of a company, misled by a forged transfer, giving a certificate to B, who transfers the shares to an innocent party C. C has clearly no title as against the true owner, but having relied on the certificate which B is able to produce he can recover damages from the company since the company is estopped as against C from denying the truth of the statement in the certificate that B is the holder of the shares. The last case I mentioned was that of *Simm* v. *Anglo-American Telegraph Company*, L.R. 5, Q.B.D. 188, which established that this liability of the company did not arise where the party claiming damages did not in fact rely on the certificate but, although innocently, on a forged transfer to himself by means of which he procured registration as a shareholder and received a certificate. No estoppel could arise there in his favour for the company made no representation as to the genuineness of the transfer, the document on which he placed reliance.

There may, however, come a later stage in the transactions with the shares at which a shareholder who has *bonâ fide*

submitted to the company a fraudulent transfer to himself and obtained thereby a certificate as to the shares may, in fact, rely on the certificate so that the estoppel will arise and the company be compelled to compensate him for damage resulting from the fact that the certificate states what is not true. This is shown by the decision in *The Balkis Consolidated Company Limited* v. *Tomkinson* [1893] A.C. 396, a case which must be distinguished from *Simm's Case, supra.* There P, the owner of shares in the company, transferred them to various purchasers who were registered by the company as shareholders. Subsequently P fraudulently executed a transfer of the shares for value to T, who sent the transfer to the company and received a certificate stating that he was the proprietor of the shares. At this stage, and on the authority of *Simm's Case*, I do not think T would have had any claim against the company on the basis of estoppel, for he had not changed his position on the faith of any certificate issued by the company but on the transfer fraudulently executed by P. T, however, proceeded to act on the faith of the certificate and sold the shares ; but by now the company had discovered the existence of the first purchasers from P, which meant that T was not the real owner of the shares, and consequently the company refused to register T's purchaser as the holder. In order to fulfil his contract with his purchaser T was driven to buy other shares in the market and he now sued the company for the price. It was held that the company was estopped by the certificate it had issued to T from denying that he was the owner of the shares, and T having relied on that certificate was entitled to recover from the company the damages he had consequently sustained by reason of the company's refusal to register his purchaser.

It is interesting to note that here the person seeking to render the company liable by way of estoppel was not a purchaser who had acted on the faith of a certificate, but a vendor who had himself received the certificate from the company. As Lord Herschell said, at p. 405 : "If the company must have known . . . that persons wanting to purchase shares might act upon the statement of fact contained in the certificate, it must equally have been within the contemplation of the company that a person receiving the certificate from them might on the faith of it enter into a contract to sell the shares. The plaintiff did enter into such a contract and thereby altered his position by rendering himself liable to the persons with whom he contracted to sell the shares. All the elements necessary to create an estoppel would appear, therefore, to be present." Nor, as in *Simm's Case*, had the plaintiff done anything to mislead the company into registering him as a shareholder and giving the certificate relied on.

The last case to which I want to refer on the question of a company's liability, on the basis of estoppel as to the title of the person named in a share certificate, is *Dixon* v. *Kennaway & Co.* [1900] 1 Ch. 833, not because it, in any way, so far as I can see, extends or affects the principle, but because it is an interesting example of the way in which a person can be said to act to his detriment on the faith of a share certificate. Broadly speaking, the facts were similar to those in *Balkis Consolidated Co.* v. *Tomkinson* : the plaintiff took a transfer of shares which was ineffective for the simple reason that the transferor had no shares to transfer. The company, however, issued a certificate to the plaintiff. She did not act on the certificate in the sense that she contracted to sell or otherwise to deal with them as had the plaintiff in *Balkis Consolidated Co.'s Case* : she had in fact retained the shares, but she was able to show that at the time of the writ she had no effective remedy against the transferor or broker, both of whom were insolvent, but that such a remedy might have existed at the time of the issue of the certificate ; and on this basis she was held entitled to recover, for, as Farwell, J., said, she had *rested* on the estoppel to her detriment and she had remained satisfied with the certificate until the time at which she could have hoped to get redress was past and gone.

So much for the estoppel as to title which may arise as against a company which has issued a share certificate. The other kind of estoppel it will be remembered is estoppel as to payment ; the principle is exactly the same, the company being bound by its representation in a certificate that shares are fully paid and liable to a person who *bonâ fide* acts on that representation to his detriment. Lord Blackburn said, in *Burkinshaw* v. *Nicolls*, 3 A.C. 1026 : "The company has issued under the seal of the company a certificate . . . in which the company has asserted that these shares have been fully paid up. These certificates are issued under the directions of the Act and are made *primâ facie* evidence of all that they state ; only *primâ facie* evidence. The certificates are given and issued for the very purpose of enabling the person who holds them to go to others for the purpose, amongst others, of selling the shares, and to say : 'Here is the certificate ; you see I am a shareholder as the company has so certified it. Act upon that, and bargain with me upon the supposition that I am.' That is the very object with which they are issued under the company's seal. Now when the company has so issued the certificate under the company's seal to enable a person to induce others to buy the shares and more especially when the company has registered the transfer solely in consequence of that, it would be in the highest degree an injustice to say that the company shall, as against that person, be permitted to say, there was a mistake or inaccuracy in the representations that the shares have been fully paid up. You would be fully entitled to say . . . that it worked an estoppel."

Several of the cases which illustrate the operation of this estoppel as to payment turned on the construction of s. 25 of the Companies Act, 1867, now replaced by s. 42 of the 1929 Act, which it will be remembered requires the registration of a contract in respect of shares issued as paid up otherwise than in cash. The modern section imposes penalties for default but s. 25 of the 1867 Act said that if no such contract were registered the shares should be deemed to have been issued and be held "subject to the payment of the whole amount thereof in cash." What, then, was the position of a *bonâ fide* transferee of shares which were not fully paid and in respect of which no contract had been registered, but which the transferee, relying on a certificate issued by the company stating the shares to be fully paid, honestly believed to be fully paid ? This was the question for decision in *Burkinshaw* v. *Nicolls*, the case from which I have just quoted. There G. contracted to sell to the company certain property part payment for which was to be made in fully paid shares. Certificates of these shares were issued by the company to G, stating the shares to be fully paid, but in fact they were not fully paid and no contract to comply with s. 25 of the 1867 Act was registered. G himself contracted to buy property from B and part of the purchase money was to consist of fully paid shares of the company, and some of his shares G transferred to B and handed over the certificates. The company was ordered to be wound up, and it was sought to put B on the list of contributories in respect of these shares, the ground being that liability existed because s. 25 had not been complied with. The House of Lords held that B was not so liable, because the company was estopped from denying that the shares were fully paid inasmuch as it had issued certificates stating that they were. It was pointed out that if there were no registered contract under s. 25 the shares were payable in cash, but this meant that it must be proved either that cash had been paid or that circumstances had arisen which rendered it unnecessary to prove that ; and such circumstances arose if the company were estopped from denying the payment in cash.

The validity of this estoppel as to payment depends, of course, upon the absence of knowledge on the part of the shareholder who claims to rely upon it, of the fact that the shares are unpaid. But, assuming this, the principle that the company cannot deny that the shares are fully paid if it has issued a certificate to that effect is, I think, as applicable

to-day as it was to the earlier cases arising under s. 25 of the 1867 Act. Even an original allottee may in certain circumstances be entitled to rely on this estoppel (*In re Building Estates Brickfields Co.* [1896] 1 Ch. 100). A gave B £100 on the faith of a promise by B to procure an allotment of one hundred fully paid shares in a company just about to be incorporated. B was entitled under an agreement with the company, which had not been registered, to fully paid shares, and eventually one hundred of these were allotted direct to A as B's nominee. The certificate stated untruly that they were fully paid. In the winding up of the company it was held that A was not liable as a contributory for the company was estopped from denying that the shares were fully paid.

The last authority to which I will refer is the well-known case of *Bloomenthal* v. *Ford* [1897] A.C. 156. There A lent money to the company on the terms that as security he was to have fully paid shares, and he was handed certificates for the shares, which stated that he was the registered holder and the shares were fully paid. A, mistakenly, but in good faith, thought the shares were fully paid, and it was held that the company and its liquidator were estopped from denying this, and that A was not liable as a contributory in respect of the shares. The case is an excellent example of the application of the principle of estoppel as to payment, and the forcible speech of Lord Halsbury excellently expresses the common-sense considerations upon which that principle is after all based.

## A Conveyancer's Diary.

**Powers of Appointment. Donee's Right to Release.**

Last week I had something to say upon some points relating to powers of appointment, especially regarding the still uncertain question as to whether an appointment by deed under a special power was good where there was an appointment by deed to one object with a verbal arrangement that it should be for the benefit of another.

This week I propose to pursue the subject of powers by considering some points regarding the release of powers.

Before 1882 a power that is simply collateral, the donee having no interest in the estate, could not be released although it had for long been held that a power coupled with an interest could. As to the latter, in *Smith* v. *Houblon* (1859), 36 Beav. 482, where a father had a life interest in a fund with a power of appointment amongst his children after his death. It was held that the father could release the power, although by so doing he gave a benefit to himself as personal representative of one of the sons who had died intestate.

By the Conveyancing Act, 1881, s. 52 (1), it was enacted that "A person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise the power." That is repeated in s. 155 of the L.P.A., 1925.

There is another class of powers, namely, those coupled with a duty or trust.

So far as such powers are concerned it has been decided both before and since the C.A., 1881, that no release is possible.

It is hardly necessary to refer to cases before the Act more than just to mention *Weller* v. *Ker* (1866), L.R. 1, H.L.Sc. 11. As for cases after the Act I may consider *Re Eyre* (1883), 49 L.T. 259.

The facts there were that a testator devised and bequeathed his residuary estate to two trustees upon trust for sale and conversion, and directed that his trustees should hold one moiety in trust for such persons in such shares and generally in such manner as the trustees should appoint, and in default of appointment in trust for all the testator's children equally. The testator stated that the reason for his giving such power of appointment to the trustees was that he had the fullest confidence in them, that they would do what was right and proper and that they would dispose of the property justly and fairly as they thought it ought to be disposed of and divided by the testator. After the testator's death one of the trustees executed a deed poll whereby he absolutely and for ever released the moiety subject to the power to the intent that thereafter such moiety might go and be held upon the trusts of the said will declared in default of appointment.

Kay, J., held that the power which the trustee had was a power coupled with a duty and remained notwithstanding the deed poll purporting to exercise it. His Lordship observed: "A trustee who has a power coupled with a duty is, I conceive, bound so long as he remains a trustee to preserve that power and to exercise his discretion as circumstances arise from time to time, whether the power should be used or not, and he can no more by his own voluntary act destroy a power of that kind than he can voluntarily put an end to or destroy any other trust that may be committed to him."

The latest case is *Re Mills* [1930] 1 Ch. 654.

In that case a testator by his will directed the income of his net residuary estate to be accumulated for a period of twenty-one years from his death, and subject to certain trusts in favour of an infant and his issue (which failed owing to the death of the grandson unmarried) declared that the trust fund and all statutory accumulations of income were to be held upon such trusts for the benefit of all or any of the children and remoter issue of the testator's father, who, in the opinion of the testator's brother, one of the two trustees of the will, should evidence an ability and desire to maintain the family fortune by replacing the sums of which it had been depleted by death duties and other taxation as the testator's brother should by any deed revocable or irrevocable appoint, and in default of and until and subject to any such appointment in trust for such brother absolutely.

There were a number of objects of the power living at the death of the testator, and in fact by a revocable appointment the testator's brother made an appointment in favour of some of them. He afterwards revoked that appointment by deed, in which he released the power to the intent that it should be absolutely extinguished.

Eve, J., held that, although the power was not a trust, inasmuch as there was no one who could enforce the execution of it, it was a power coupled with a duty in the nature of a trust and could not be released. The learned judge said that the testator had made his intentions manifest. The income was to be accumulated in the hope that some member of the class might be found to prolong the accretion, and it was impossible, his Lordship believed, that he ever intended that his brother could at any time release the power and constitute himself absolute owner. His Lordship referred, amongst other cases, to *Re Eyre*, and decided that the power could not be released.

The Court of Appeal reversed that decision.

Lord Hanworth, M.R., pointed out that there was no obligation upon the testator's brother to exercise the power at all, and by the very terms of the will there was a gift to the brother "in default of until and subject to any such appointment." His Lordship referred to the categories into which powers were divided in "Sugden" and "Farwell," and considered many of the authorities, and came to the conclusion that this was not a power coupled with a duty, but was a power coupled with an interest because if the power was not exercised, then the trust in favour of the testator's brother remained, but if he did exercise it, his interest would undoubtedly be affected and diminished thereby.

Lawrence, L.J., in agreeing with the Master of the Rolls, said: "The power is clearly one which falls under the third classification of powers stated by Sir George Jessell, M.R., in *Re D'Angibau* (1879), 15 Ch. D. 228, i.e., a power appendant

or appurtenant. Under the will the trust fund is to be held in default of and until and subject to any appointment in trust for the plaintiff" (the brother) "absolutely; it is therefore plain that the plaintiff has a beneficial interest in the trust fund, which interest will be affected, diminished or disposed of by an exercise of the power. I know of no case either before or since the Conveyancing Act in which it has been held that a power appendant or appurtenant could not be released."

His Lordship said also that there was clearly no duty on the testator's brother to exercise the power, and nobody who could enforce its exercise or complain of a breach of trust if it was not exercised.

It was clear, of course, that if the power were one coupled with a duty or trust to exercise it the power could not be released—but the expression used by Eve, J., of a "duty in the nature of a trust" did not recommend itself to the members of the Court of Appeal.

It may be mentioned with regard to powers which may be released that a covenant not to exercise a power will take effect as a release if it is in equity.

In *Re Evered* [1910] 2 Ch. 147, a woman under her marriage settlement had a testamentary power of appointment over a fund amongst her children and issue, and in default of appointment the fund was to be divided among her children equally. In exercise of the power she, by her will, the donee, appointed £60,000 to be divided equally between her six sons and settled upon their children, and the residue was to be divided into sevenths and settled upon her sons and her daughter and their children. By a deed executed after the date of the will the donee covenanted with the sons not to exercise the power in such a manner as to reduce their respective shares below £7,000 apiece. It was held that the fetter imposed by the covenants involved the consequence that each of her seven children should receive £7,000 absolutely as in default of appointment, and that the appointment operated only over the balance of the fund after deducting £49,000.

Nevertheless, whilst a donee may covenant not to exercise the power or not to exercise it to the full extent, he cannot bind himself to exercise it in a particular way.

So, in *Re Cooke* [1922] 1 Ch. 292, a donee covenanted to appoint to her son not less than £4,000 and not to revoke the appointment. There was no covenant to leave unappointed such part of the fund as together with any appointed part would make up the covenanted sum. The donee by will appointed more than £4,000 to her son, and by a subsequent will revoking all former wills appointed to the son a sum less than £4,000.

It was held that the covenant to appoint not less than £4,000 did not fetter the donee's power so as to prevent her from exercising it so as to defeat the covenant; that the covenant to appoint in a particular way was void, and the covenant not to revoke, though negative in form, was, in substance, a covenant not to exercise the power in a particular way and was also void.

The distinction between these cases is that in *Re Evered* the benefits secured to the sons by the covenant flowed from the trusts in default of appointment, whilst in *Re Cooke* there was a bargain between the donee and one of the objects that the donee would exercise it in a certain way, not merely to refrain from exercising it in the whole or in part and leave the trusts in default of appointment to take effect.

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The annual provincial meeting of the Auctioneers' and Estate Agents' Institute was held at Belfast under the presidency of Mr. H. H. Robinson, from 2nd to 4th July. The visitors were entertained at luncheon by the President on the 3rd July, and afterwards visited Stormont, where they were shown over the Parliament buildings. The annual dinner was held in the evening.

# Landlord and Tenant Notebook.

**Defamatory Statements to and by Landlords Privileged.**

The relationship of landlord and tenant is capable of attaching qualified privilege to the occasion of a slander or of a libel. For even in these unromantic days, a landlord may be considered to have an interest in the subject-matter of a statement disparaging a tenant; and he who utters it may be able to establish some right or duty which will enable him to escape what would otherwise be the consequences of making the defamatory communication. Those concerned with good estate management, or with ownership of modern flats (where the breath of scandal beats the express lift every time), may find the following decisions worth noting.

In *Cockayne* v. *Hodgkinson* (1833), 5 C. & P. 543, it appeared that a landowning marquis had asked the defendant, one of his tenants, to report to him anything he heard or saw respecting game on his (the landlord's) land. When the plaintiff applied for the post of gamekeeper, the defendant, in the course of a long letter, wrote that there was great deficiency in the plaintiff's character, which was not becoming to gamekeepers; that the plaintiff encouraged poaching and destroyed game, and would carry on a pretty game of defraud. Held, that if the defendant were desired to make communications, any communication he made would be privileged, if he wrote *bonâ fide*. Both conditions are of importance in these cases of qualified privilege.

Communications by a tenant on a large estate were also the subject-matter of *Toogood* v. *Spyring* (1834), 1 C.M. & R. 181, which is a leading case on the question of qualified privilege. The landlord employed a carpenter to attend to repairs to farm buildings. The plaintiff was a man employed by this carpenter. One day, soon after the plaintiff had completed some work on the defendant's farm, the defendant met him and a fellow-workman and criticised the work, ascribing the quality to drunkenness and the drunkenness to cider obtained by breaking open the cellar door. Subsequently the defendant repeated his assertion to the fellow-workman in the plaintiff's absence, and to the plaintiff's employer. Held, that the first occasion was privileged, the fellow-workman being a "casual bystander"; the second occasion was not privileged; the third clearly was privileged.

A statement made by a landlord concerning the characters of the latter's lodgers contained the "words complained of" by the plaintiffs in *Knight* v. *Gibbs* (1834), 1 A. & E. 43. It appeared that the tenant, while not believing that the plaintiffs were as black as the defendant painted them, had taken the line of least resistance and given them notice, in order to satisfy the defendant. The statement, which described the plaintiffs, who were females, as being in the habit of tapping at their window and implied that their behaviour was shameless, was held not to have been made *bonâ fide*; and it was laid down that the fact that it was not believed by the tenant did not help the defendant.

For a case between landlord and tenant, the latter being the plaintiff, one can consult *Tuson* v. *Evans* (1841), 12 A. & E. 733; that is, it was the defendant's case or belief that the relationship existed. Both parties were, incidentally, members of learned professions, the plaintiff a solicitor and the defendant a parson. There was a dispute between them as to whether certain land was, after an inclosure award, let by the defendant to the plaintiff, and, relations being thus strained, the plaintiff employed his clerk to write any necessary letters to the vicar. One such letter, accompanying a payment of tithe, denied that rent was due; whereupon the defendant wrote to the clerk complaining of the plaintiff's attempt to defraud him of produce and characterising that attempt as mean and dishonest. Held, privilege had been exceeded by comments on motive.

The general principles of the doctrine of qualified privilege of defamatory statements, in so far as they affect the parties

to a lease or tenancy, may be said to be illustrated by the above reported decisions, and for more modern instances one must turn to the daily newspapers. In what Lord Justice Greer recently described as Mr. Gatley's "monumental" work on the subject of Libel and Slander, references are to be found to two such illustrations. Corresponding to *Knight* v. *Gibbs*, *supra*—though contrasting with it as regards the actual decision on the facts—was *Johansson* v. *Heron*, an account of which appeared in *The Times* of 26th October, 1917. The defendant in this case was part owner and manager of a block of flats, and, a porter having advised him of rumours about the morals of the plaintiff, she being a housekeeper employed by one of his tenants, he communicated the allegations to the tenant in question. In this case the occasion was held privileged; and there was no evidence of "malice."

And *Cockayne* v. *Hodgkinson*, *supra*, may be said to have its modern counterpart in *Wilson* v. *Ferguson* (*The Times*, 11th March, 1921), in which it appeared that a large number of persons residing in one district had written to a landlord alleging that the demised property was conducted as a brothel, and was visited by the plaintiff. Also a privileged occasion, but it was ruled that there was evidence of malice; after which the action was compromised.

As to whether the relations between a landlord and his tenants can ever be the subject-matter of public interest so as to enable a defendant to plead "fair comment," authority and illustration are scanty. In the Irish case of *Hogan* v. *Sutton* (1867), 16 W.R. 127, it was laid down that the mere fact of the relationship is not enough to serve such a purpose (the author of the libel being the parish priest) but see *South Hetton Coal Co.* v. *North-Eastern News Association* [1894] 1 Q.B. 133, C.A., for a ruling that an article criticising the condition of colliers' cottages in a particular village was, as it related to so large a number of people, *primâ facie* privileged. And undoubtedly, one can imagine many statements reflecting on local authorities as landlords which would, provided they were within the limits of fair comment, be privileged.

## Our County Court Letter.

### THE REMUNERATION OF DOCTORS.

In the recent case of *Burnett and Others* v. *Warden*, at Grimsby County Court, three doctors claimed £16 9s. as fees for professional services, and the counterclaim was for £277 as damages for negligence. The defendant's case was that his wife had had an affection of the throat, which prevented her from swallowing, and the plaintiffs had diagnosed cancer. They therefore performed an operation for gastrostomy, and for four years she was fed through the side. She then went to the London Cancer Hospital, where she was found not to be suffering from cancer. Dilatation of the throat was carried out, and after six weeks she was able to eat normally. The plaintiffs' case was that they had diagnosed cardiospasm, and not cancer, but the patient would not submit to dilatation. It was therefore necessary to perform gastrostomy, in order to save her life, and to build up her strength for dilatation later. His Honour Judge Langman found that cardiospasm had been diagnosed, and that the gastrostomy was not unnecessary. The fact that the patient might have been cured earlier was no evidence of negligence, as it was necessary also to consider her reluctance, the periods when no doctors were in attendance, and the effect of supervening illness and weakness. Judgment was given for the plaintiffs, on the claim and counterclaim, with costs, subject to a stay of execution for twenty-one days, pending an appeal.

### THE POWERS OF MARKETING BOARDS.

In a recent case at Birmingham County Court (*The Bacon Marketing Board* v. *Salisbury*) the claim was for £50 1s., as a penalty imposed under the Bacon Marketing Scheme, 1933. The case for the plaintiffs was that two pounds of home-cured bacon was sold for 2s. at the shop of the defendant, who could not sell bacon from his own pigs—unless he had notified the Board of his estimated total quantity of bacon pigs for the ensuing year. The defendant had not done this, nor had he put forward his defence, although he could have claimed arbitration. The defendant's case was that a farmer had contracted to supply 36 pigs, but had failed to do so, whereupon (in order to keep faith with the public) the defendant had fattened and killed his own pigs. The defendant had paid the levy (of 6d. per hundredweight of bacon sold) and the Board, having accepted the levy, were estopped from alleging any breach of the regulations. His Honour Judge Dyer, K.C., held that it was the Board's duty to collect the levy, and no difference was made by the fact that the defendant was contravening other regulations. There was therefore no estoppel, and the defendant, having registered under the scheme, was subject to the liabilities thereby imposed as well as being entitled to the advantages. Judgment was given for the plaintiffs, with costs.

### THE RIGHTS AND LIABILITIES OF CABBAGE GROWERS.

In the recent case of *Tunnard* v. *Lyons*, at Boston County Court, the claim was for £12 10s. in respect of 200 dozen cabbages, which the defendant had bought, but had not removed. The plaintiff's case was that in September, 1934, the defendant verbally agreed to buy the whole plot at 1s. 3d. per dozen, and to cut and cart them away as they became marketable. This was confirmed by the plaintiff's letter, to which the defendant did not reply, although he cut and paid for quantities of cabbages at various dates. In the middle of December, the defendant was notified that more cabbages required cutting, but no notice was taken, and the plaintiff (about the 20th January, 1935) turned some sheep in among the cabbages, which had become unmarketable, and were afterwards ploughed in. The defendant's case was that he did not buy the whole plot, but had merely agreed to cut what cabbages he required, and to pay 1s. 3d. a dozen for them. The weather had prevented him from cutting cabbages in December, and he saw sheep eating them in January, whereupon he decided to take no more. His Honour Judge Langman observed that the defendant was only willing to perform his bargain so long as the price was in his favour. As the cabbages were worth 10s. (even after they had rotted) as manure and sheep food, the plaintiff was only entitled to judgment for £12 and costs.

## Land and Estate Topics.

By J. A. MORAN.

There is a very active demand for almost every class of real estate investment just now; both the small investor and speculator find it hard to compete with the large trusts and corporations, but experience has shown that persistence in attendance will sometimes result in picking up a good bargain. Chief interest still continues to be centred in freehold ground rents, and shop premises and building plots are much in favour. The most hopeful feature of the market, however, is a very keen demand for farms and agricultural land. There appears to be a general feeling that the chief industry of the country has a promising future; and if purchases can be effected at reasonable prices, and there is a willingness to hold on for a while, there is a good prospect of a favourable return on capital. The advance of aviation is a thing to be reckoned with; and it may not be long before there will be much buying of agricultural land for aerodromes or aircraft factories.

The new President of the Land Agents' Society, Mr. Leslie R. Pym, is the eldest son of the late Right Rev. W. Ruthven Pym,

Bishop of Bombay. On leaving Cambridge he served his articles as a land agent with Mr. Cecil Argles, agent for Lord Lucas, and subsequently became assistant to the late Sir Francis Walker, Commissioner for the late Duke of Northumberland. His appointment to the agency of the Llanover Trust Estates in South Wales dates from 1914, and ten years ago he also became agent for the late Lord Treowen's Llanarth and other estates in Monmouthshire.

Many members of the Auctioneers' and Estate Agents' Institute went over to Belfast for the annual provincial meeting held on Tuesday, Wednesday and Thursday, and I shall not be surprised to hear that not a few, inspired by the native hospitality and sincerity, as well as the beauty of the surrounding scenery, prolonged their visits.

In his admirable presidential address in the North of Ireland capital, Mr. H. H. Robinson made some interesting remarks on Town and Country Planning. The most serious obstacle to it at the moment, he said, was the scarcity of trained and experienced men to administer the Act on wise and sensible lines without irritating and petty restrictions. There was no more difficult task than to plan the development of a district for more than a few years ahead; for rarely did development proceed upon the lines originally anticipated or intended. Schemes had to be plastic and opportunities for amendment had to be facilitated. Wisdom, foresight and a fine public spirit were necessary for the successful administration of such schemes on the part both of the authorities and of the owners and their advisers.

Two changes of addresses are worth noting. Messrs. Glasier & Sons, the well-known and old-established firm of surveyors, valuers, auctioneers, land and estate agents, have moved to No. 6, St. James's-street, S.W., not far from their old premises; and Mr. Hugh C. Webster has taken up his residence at Old Manor, Little Berkhampstead, Hertford.

The County of London no longer has a farm within its borders, as the last one, well known to be at Dulwich, has just been purchased for other purposes. The property stands on a lower slope of the Sydenham hills. From it, a wide panorama of London is obtained, and during the War it was a vantage point for viewing air-raids. Along the farm lie the Dulwich Golf Links, where Mr. J. H. Thomas, who lives nearby, may occasionally be found.

There is nothing to prevent a woman from becoming an auctioneer as long as she has a ten-pound note. But I do not advise the occupation for the gentler sex. Her best course would be to try for a fellowship of one of the leading professional occupations—the College of Estate Management will be a great help—and when she succeeds, join a well-known auctioneering firm. She would not be long without a licence after she had showed her capabilities.

Whether Minster House, out Thanet way, is the "oldest dwelling-house in England" is open to question; but it is high time someone bought it. Its periodical appearances in the market get a bit boring, and the best thing to do is to offer it at auction at a low upset price and sell it to the highest bidder. The old building, certainly, has many interesting features, including a "Kingpost" roof, smoke-blackened from the days when chimneys were unknown, and the smoke was left to find its way out through "vents which are still also intact."

The great misfortune of this ancient abbey is that it is close to the parish church, which has the most unkempt churchyard I ever visited, and a spire that would break the heart of a small suburban architect. And as if these are not bad enough, the clock tries to emulate "Big Ben," and is miles out of tune. I have passed it tens of times within a year, and when the music gets going I feel compelled to put my fingers in my ears.

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Captain Henry Harold Clarke, solicitor, late R.W.F., of Stoke Poges, left £96,356, with net personalty £88,742.

# Obituary.

LORD DANESFORT, K.C.

The Right Hon. Lord Danesfort, K.C., Chancery lawyer and politician, of Riccall Hall, Yorks, died on Sunday, 30th June, at the age of eighty-two. Lord Danesfort, who perhaps will be better remembered as J. G. Butcher, was educated at Marlborough and Trinity College, Cambridge, where in 1874 he was eighth classic and eighth wrangler, and was made a Fellow of his college in 1875. He was called to the Bar by Lincoln's Inn in 1878, and took silk in 1897, practising successively in the courts of Stirling, Farwell and Neville, JJ. He became a Bencher of his Inn and in 1926 was treasurer. Lord Danesfort was a keen politician and as an Irishman was a great protagonist for the claims of the Irish loyalists. He represented in the Conservative interest the City of York in the House of Commons from 1892 to 1906 and 1910 to 1923. He was created a Baronet in 1918 and raised to the peerage in 1924. He was for many years a Member of the Bar Council, a director of both the Equity and Law Life Assurance Society and the Law Reversionary Interest Society, and a vice-chairman of the R.S.P.C.A. Lord Danesfort leaves no children and the title becomes extinct.

SIR HARRISON MOORE.

Sir Harrison Moore, Emeritus Professor of Law in Melbourne University, died recently at the age of sixty-eight. He was educated at King's College, Cambridge, and was called to the Bar by the Middle Temple in 1891. Elected Professor and Dean of the Faculty of Law at Melbourne in 1892, he held those posts until 1928, when he retired with the title of Emeritus Professor. He was created a C.M.G. in 1917 and a K.B.E. in 1925. Sir Harrison Moore wrote several books, including "The Constitution of the Commonwealth of Australia," which appeared in 1901.

MR. A. BALMER.

Mr. Arthur Balmer, solicitor, a partner in the firm of Messrs. Church, Adams, Tatham & Co., of Bedford-row, W.C., and Hart-street, W.C., died in a London nursing home on Thursday, 27th June, at the age of sixty. Mr. Balmer, who was educated at Cheltenham College, served his articles with Messrs. Sedgwick, Turner, Sworder & Wilson, of Watford, and was admitted a solicitor in 1899. He acted as Solicitor to the Co-operative Building Society.

# Books Received.

*Judgment Summonses in the Divorce Division.* By EDGAR A. PHILLIPS, LL.B. 1935. Demy 8vo. pp. xii and (with Index) 55. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 5s. net.

*Company Prospectuses.* By H. M. SHURLOCK, of Lincoln's Inn, Barrister-at-Law. 1935. Demy 8vo. pp. xii and (with Index) 110. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 9s. 6d. net.

*The Colonial Legal Service List.* First Edition, 1935. London: H.M. Stationery Office. 9d. net.

*The Druce-Portland Case.* By THEODORE BESTERMAN. 1935. Demy 8vo. pp. 308. London: George Duckworth & Co., Ltd. 10s. 6d. net.

*The Electricity (Supply) Acts,* 1882 to 1935. By EVIN C. MEKIE, B.L., and DOUGLAS H. JAMES, M.A., LL.B., Solicitors, Edinburgh. 1935. Demy 8vo. pp. xvii and (with Index) 374. London: Eyre & Spottiswoode (Publishers) Ltd. 21s. net.

*Twenty-seventh General Report of the Public Trustee.* 1935. London: H.M. Stationery Office. 2d. net.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Husband and Wife**—Desertion—Reasonable Cause for Leaving—Non-consummation of Marriage—Failure to Allege—Order made—Revocation—Fresh Evidence.

*Q.* 3182. In March, 1934, a wife, who had till then been residing with her husband, obtained from the justices a separation order against him and payment of £1 per week under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, on the ground of desertion. The husband personally defended the proceedings and never disclosed the fact that the marriage had not been consummated. He alleges his wife has always refused consummation, although they have resided together. Would this have been a defence to the proceedings by the wife under the Acts, and, if so, how could it have been proved? Can the justices order be now revoked? If so, by what process, and what evidence would be required?

*A.* If the husband's statement is true, he had a good defence: *Ousey* v. *Ousey* (1874), L.R. 3 P. & D. 223; *Synge* v. *Synge* [1900] P. 180; *Davis* v. *Davis* [1918] P. 85. The husband could himself have given evidence of the refusal and also have called the wife as his witness. We doubt whether the order could now be revoked. For revocation there must be fresh evidence: Summary Jurisdiction Act, 1895, s. 7. As to the meaning of "fresh evidence," see Lieck & Morrison's "Matrimonial and Family Jurisdiction of Justices," 2nd ed., p. 100. It does not include evidence which might have been called: *Johnson* v. *Johnson* [1908] P. 19; *Weightman* v. *Weightman* (1906), 70 J.P. 120; *Groves* v. *Groves* (1906), 71 J.P. 167; *Cross* v. *Cross* (1931), 95 J.P. 86.

### Vesting of Sewers.

*Q.* 3183. A builder has developed an estate of about 1,000 houses, laying out the streets and providing for drainage of the houses as required by the local authority. It has now been represented to him that the local authority ought to reimburse him for the cost of the sewers constructed by him on his land. The estate is on a hillside and the houses are mostly drained by combined drains running through the gardens of the houses into a sewer constructed by the builder in the main estate road, running at right angles at the foot of the hill. Your opinion is sought—

(1) As to whether the said combined drains are sewers and vest in the local authority;

(2) Whether the local authority are liable to pay for the cost of such combined drains;

(3) If, as is assumed, the sewers constructed under the roadway (into which the combined drains run) are vested in the local authority, is the authority liable to pay for the same?

(4) Does it make any difference whether the local authority is an urban or a rural council?

*A.* (1) The combined drains are sewers, and they vest in the local authority under the Public Health Act, 1875, s. 13: see *Southstrand Estate Co.* v. *East Preston R.D.C.* [1934] 1 Ch. 254.

(2) The local authority are not liable to pay the cost of the combined drains.

(3) Nor for the cost of the sewers.

(4) No difference is made, whether the local authority is an urban or rural council.

### Blind Commissioner of Oaths.

*Q.* 3184. A blind person was recently appointed a commissioner for oaths, the fact of his blindness having been previously notified to the Lord Chancellor's clerk. Will you please give your opinion as to whether he will be competent to superintend and attest the execution of an administration bond?

*A.* The attestation of an administration bond imposes no greater demand upon the visual capacity of the commissioner than administering an oath. A blind commissioner is therefore competent to superintend and attest such an attestation, in the absence of any limitation of his powers under his appointment.

**Sale of Property Charged with certain Debts**—Evidence of Payment of the Debts.

*Q.* 3185. By a Deed of Release and Conveyance dated November, 1933 (made by way of family arrangement), a freehold farm became vested in A beneficially charged with (*a*) a mortgage for £5,500, created by a testator (the father of the parties to the Release and Conveyance), and (*b*) payment of the testator's debts, and the Deed contained a covenant by A to pay the said mortgage and debts. A has contracted to sell the farm as beneficial owner, but the purchaser's solicitor requires evidence to be supplied to the effect that all the debts and liabilities of the testator have been paid and discharged. The farm has not realised sufficient to pay both the mortgage and the debts. Can the purchaser's solicitor insist on this evidence, or can A compel the purchaser to complete without furnishing such evidence? It has also been suggested that if there is any difficulty about this, the sale should be carried out by the mortgagees when their power of sale arises. Would the mortgagees be at liberty, if they so wished, to adopt the vendor's contract and to complete it by conveyance in his stead, they, of course, selling as mortgagees?

*A.* We think that the attitude adopted by the purchaser's solicitor is justified, seeing that the debts are definitely charged upon the property. We do not think that A can compel the purchaser to complete without the evidence required. The mortgagees certainly might (if so minded) adopt the contract but the purchaser could not be obliged to take title from them if he did not wish to do so. To do this would be to oblige the purchaser (in effect) to enter into a new contract with the mortgagees (*Re Bryant and Barningham's Contract* [1890] 44 Ch. D. 218). If the charge is still subsisting the property would appear to be "settled" (S.L.A., 1925, s. 1 (1) (v)).

**Will**—Gift of Personalty to Wife for Life and after her Death to a Daughter—Whether the Daughter takes a Vested Interest on Testator's Death.

*Q.* 3186. By his will of 1929 the testator bequeathed all his real and personal estate unto his trustees upon trust for sale, to invest, and to pay the income of the investments to his wife during her life and after her death as to the capital and income upon trust for his daughter. The testator directed that "in the event of the failure of the before-mentioned trusts in favour of his said wife and daughter the capital and income of the trust fund should be held upon trust in equal shares for" three hospitals therein mentioned. The

testator is dead and his estate consists exclusively of leasehold property and pure personalty. Upon the true construction of his will is the gift in remainder to his daughter (*a*) contingent upon her surviving her mother, (*b*) absolutely and indefeasibly vested so that in the event of her death in the lifetime of her mother her representatives will take, or (*c*) a vested interest liable to be defeated by her death in her mother's lifetime? Please quote authorities.

*A.* We express the opinion that the daughter took an absolute and indefeasibly vested interest upon the death of the testator expectant upon her mother's death and, as such, transmissible through her personal representatives. "The most usual case is where the property is given to the trustees for the widow for life and after her death to stand possessed of the capital for testator's children. In such a case the shares vest immediately on the death of the testator. . . . The assumed intention is that the enjoyment is merely postponed for the convenience of the estate and to allow of an intervening interest (*Hallifax* v. *Wilson* (1809), 16 Ves. 171)." We quote the above from Emmet's "Notes on Perusing Titles," vol. II, p. 391, 12th edition. There is no contingency, and assuming the daughter has survived the testator there will be no question of a failure of the trusts. Whether there would be held to be a contrary intention had s. 33 of the Wills Act, 1837, been in point seems obscure.

**Trustee**—Power to Exchange an Authorised Investment not being a "Trustee Security" for a Trustee Security Without the Consent and Against the Wishes of the Tenant for Life.

*Q.* 3187. By his will John left £1,000 upon trust for investment and to pay the income to his daughter for life, and afterwards to her children, all of whom are of age. The money was invested in debentures which bore interest at 5 per cent., and were not trustee securities, but were authorised by the will. There were two trustees, but one has just died and the survivor now wishes to realise the debentures, which can be done at par, and invest in trustee securities, which will mean a big reduction in interest. Can the life tenant prevent this being done and what steps should she take? She holds the certificate which is in the trustees' names. Is she entitled to retain it and refuse to hand it over to the surviving trustee to enable him to realise it? If not, can she choose what security the money should be invested in, or has the trustee the power to select what he thinks fit against her wishes?

*A.* We do not think that the tenant for life alone can prevent the trustee from making the change of investment. A trustee may invest any trust funds in his hands, *whether at the time in a state of investment or not*, in the securities authorised by law for the investment of trust funds (see T.A., 1925, s. 1 (1)). Every power conferred by s. 1 of the T.A., 1925, can be exercised "according to the discretion of the trustee" (subject to any consents required by the will or by statute, and no consents are required in this case by statute) (see T.A., 1925, s. 3). The tenant for life is certainly not entitled to retain the certificate. All the children of the tenant for life are *sui juris*, and she and they are the only persons entitled in equity. If, therefore, she and they specially authorise and request the trustee to retain the debentures, it is probable that he will hesitate to disregard their expressed wishes, though we do not think that he is obliged to give effect thereto. It might be prudent to press for the appointment of an additional trustee. In replying to this query, it is assumed that there is nothing in the will (e.g., an express power to vary investments) having any bearing on the point.

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A book entitled "Lilies: Their Culture and Management," has recently been published by Country Life, Ltd. One of the authors of the book is His Honour Judge Drysdale Woodcock, K.C., who has been an enthusiastic grower of lilies for many years.

# To-day and Yesterday

Legal Calendar.

1 July.—The case of *Dew* v. *Clark*, heard on the 1st July, 1851, and reported in 16 Jur. 1, has a curious footnote: "The reporter has gone more fully into the facts of this case than the importance of the question, in a legal point of view, demanded, in order that the public in general, and Mr. Charles Dickens in particular, may see what were the real grounds of the petitioner's long imprisonment, and to what extent the facts of this case, which is the chief one referred to in that sometimes entertaining and able periodical called 'Household Words,' support the crusade against the Court of Chancery . . . 'Dickens's Reports' have never been held in very high estimation, for correctness, by the Profession."

2 July.—On the 2nd July, 1924, Jean Pierre Vaquier took his place in the dock at the Guildford Assizes to stand his trial for murder. Vain to the last degree, he had become infatuated with the wife of a Byfleet publican. He had carried on an affair with her and poisoned the husband, while a guest at his house. He did not understand English, and at the trial, during which he adopted the pose of an amused and flippant spectator, the proceedings had to be translated to him. When he was found guilty, fury and vituperation replaced indifference.

3 July.—On the 3rd July, 1894, Lord Russell of Killowen was appointed Lord Chief Justice of England in place of Lord Coleridge.

4 July.—On the 4th July, 1846, Lord Lyndhurst resigned the Great Seal for the third and last time, his final term of office having lasted five years. He had succeeded Lord Eldon as Chancellor in 1827, returned to the Woolsack in 1834 for five months during the shortlived Conservative administration of that year, and yet again taken up office when the Whigs were driven out in 1841. When his party returned to power in 1852 and 1858, he was too old to take up again the labours of the Chancellorship.

5 July.—On the 5th July, 1780, the trial and conviction of the Gordon Rioters was in full swing, but Susannah Clarke escaped through a hole in the law. She had urged the mob to break into a house saying: "They are Irish Catholics, if not, why do they keep Irish wakes?" Then the rioters had attacked it. But the Lord Chief Baron said at the trial: "It is a rule of law that no woman can be charged with any felony committed in the presence of her husband, the law presuming that the wife acts under the direction of her husband." Her husband has been the second man to rush into the house and she was acquitted.

6 July.—Mr. Justice Weston died on the 6th July, 1572, after nearly thirteen years of judicial service in the Court of Common Pleas, to which he had been appointed by Queen Elizabeth shortly after her accession, being raised by her to the dignity of the coif. Queen Mary, the year before her death, had appointed him Solicitor-General. The Westons were a great legal family in those days. The judge's brother was Lord Chancellor of Ireland; his nephew became a Baron of the Exchequer in 1631, and another relative attained the same honour in 1634.

7 July.—Mr. Baron Wood died on the 7th July, 1824, at his house in Bedford-square. He was buried in the Temple Church. He began his legal career as the articled clerk of an attorney at Cawthorne, who advised him to try his fortune at the Bar. As a special pleader his reputation drew him the most promising pupils, and he set on their great careers Lord Ellenborough, Lord Erskine and Lord Tenterden. In 1807, he was raised to the bench of the Court of Exchequer, where he served with great credit for nearly sixteen years.

THE WEEK'S PERSONALITY.

Great as was his reputation at the Bar, in five short years upon the bench Lord Russell of Killowen completely overshadowed it by his judicial achievements. It was said of him that "one great quality distinguished Russell as a judge; he always went straight for the bull's-eye of truth. If he were occasionally arbitrary or impatient, it was owing to his desire to get quickly through the business. No man could be more attentive. A judge will sometimes loll in his chair; he will sometimes even read a newspaper, a most insulting proceeding when you are addressing the jury"—this was thirty-five years ago—"There was nothing of that about Russell. He gave his whole mind to the case and to every one in the case. At the Bar, he would ride rough-shod over an opponent. On the bench, he always considered your feelings. I think he was greater as a judge than as an advocate." His character blended the qualities of the northern and southern Irishman, combining with keen intellect and resolute will sensibility and even enthusiasm. His deep kindliness was often masked by coldness and severity of manner. He was a man of business and a man of dreams, large-minded in his views of men and things. No man ever passed by a more natural transition from the Bar to the Bench.

SAINTS AND THE LAW.

Mr. Justice Bennett was recently very much amused when a rising young Chancery junior fortified his argument with a witty illustration drawn from the conduct of St. Simeon Stylites, who took up his abode on the top of a pillar where there was room for one person only. His argument, however, did not prevail, and it is notable that the examples of sacred history rarely fit in with legal principles. Thus, on the occasion of the discussions on the Irish Church Bill which Lord Chancellor Westbury opposed in the House of Lords as a measure of destruction and confiscation, mention was frequently made of St. Ambrose, and there was much discussion whether in applying the vessels of the Church to secular uses he had been guilty of sacrilege. On this question Westbury observed: "What might be the opinion respecting St. Ambrose in the days when he lived, I do not know; but I must say, with the modern ideas of property, that if St. Ambrose had been brought before me in equity, I should not have hesitated to find him guilty of a breach of trust and to make him refund the property."

HAIR ON THE FACE.

The story of a magnificent moustache clipped off its sleeping wearer by a frolicsome friend ended in the French law courts recently when the victim brought an action for damages. The plaintiff was somewhat mollified when counsel for the defence told him that he was handsomer than ever without his moustache. He would have got nothing at all had his case come before the famous Mr. Justice Park, who had so profound a prejudice against hair on the face that on one occasion he said to a witness who wore a fine pair of whiskers: "How dare you come before me with those hairy appendages? Stand down, sir. I shall not allow your expenses." Lord Russell of Killowen at a later date did all he could to compel leaders of the Bar to go clean-shaven and Vice-Chancellor Bacon had the same prejudice. Not long ago there occurred in the French courts one of the oddest scenes ever enacted. A confidence trickster in the dock was found to have grown a beard since his frauds. The judge provided shaving tackle, the usher announced himself an expert barber, and the culprit, having been shaved in an ante-room, was duly identified and convicted.

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A solicitor's clerk was fined 15s. at Bow-street recently for exceeding the speed limit in St. James's Park. It was pleaded that he had been pursuing another car to serve a writ on the occupant.

# Notes of Cases.

## Judicial Committee of the Privy Council.

### Commissioner of Income Tax, Madras *v.* P.R.A.L. Muthukaruppam Chettiar.

Lord Atkin, Sir John Wallis and Sir Shadi Lal. 24th May, 1935.

INDIA—REVENUE—INCOME TAX—PARTNERSHIP—DISSOLUTION—DISTRIBUTION OF PROFITS—ASSESSABLE TO TAX—INDIAN INCOME-TAX ACT, 1922, s. 4 (2), s. 66.

Appeal from the High Court, Madras.

The question on this appeal was whether a sum of Rs.38,305 was a receipt of capital or a receipt of profit assessable under s. 4 (2), of the Indian Income Tax Act, 1922. The respondent was a Chetti carrying on business in Madras, where he resided, and in various other places within and without British India. He was, up to May, 1930, one of three partners in a money-lending business at Colombo, in which he had a $6\frac{3}{4}$ share. On the 31st May, 1930, he severed his connection with that firm, and an account was taken of the amounts due to him by way of capital, surplus capital, share of profit and interest thereon. A sum of Rs.2,09,670 was found due to him which included Rs.23,500, share of profits, and Rs.38,305, interest on capital. The Rs.38,305 together with the greater part of the capital sum due was remitted to him in Madras. The only question for the Court was whether the sum of Rs.38,305 received by the respondent in Madras in respect of interest on capital employed in business in Ceylon was assessable under s. 4 (2), of the Income Tax Act. The question was whether the effect of the dissolution was to make payment of all the sums due on dissolution payments by way of capital and not payments of income or profits. The High Court at Madras held that the principles laid down in the English case of *Inland Revenue Commissioners* v. *Burrell* [1924] 2 K.B. 52, governed the case, and decided in favour of the respondent. The Commissioner now appealed.

LORD ATKIN, giving the judgment of the Board, said that *Inland Revenue Commissioners* v. *Burrell, supra*, involved quite a different set of facts—the receipt by a shareholder of his share of the assets of a company upon a winding-up. The position in respect of a partnership was different. The profits were the profits of the partners, and as soon as declared constituted an obligation from the firm to each partner. The account taken on dissolution ascertained what was due to the partners for profits, and what was due for capital. In other words, on dissolution of a partnership, an outgoing partner had the right to receive, not, as in the case of a shareholder in a winding-up of a company, only a share in the assets, but to receive payment of his profits which were his before dissolution and did not cease to be his on dissolution. In their lordships' opinion the respondent received the payment in question in India as a payment of profits and was properly assessed. Appeal allowed.

COUNSEL: *L. de Gruyther*, K.C., and *Pringle*, for the appellant; *C. Durai* and *G. E. Miles*, for the respondent.

SOLICITORS: *Solicitor*, India Office; *Douglas Grant and Dold*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### Moore and Others *v.* Attorney-General for the Irish Free State and Others.

The Lord Chancellor, Lord Atkin, Lord Tomlin, Lord Macmillan and Lord Wright. 6th June, 1935.

IRELAND—APPEALS TO JUDICIAL COMMITTEE OF PRIVY COUNCIL—ABOLISHED BY IRISH LEGISLATION—VALIDLY ENACTED—CONSTITUTION (AMENDMENT No. 22) ACT, 1933, OF IRELAND—STATUTE OF WESTMINSTER, 1931 (22 Geo. 5, c. 4), s. 2 (1), (2).

This preliminary point, under an Order in Council, raised the question as to the validity and effect of the Constitution

(Amendment No. 22) Act, 1933, of the Parliament of the Irish Free State, which purported to abolish the right of appeal from the Supreme Court of the Irish Free State to His Majesty in Council. The preliminary question arose in connection with a petition for special leave, which was granted, to appeal from a majority judgment of the Supreme Court of the Irish Free State, reversing the decision of the trial judge and dismissing an action brought by the petitioners, Major R. L. Moore and others, against a number of defendants for alleged trespass on a several fishery in the tidal portion of the River Erne, Donegal, of which the petitioners claimed to be the owners.

The LORD CHANCELLOR, in giving the judgment of the Board, referred to the Treaty of the 6th December, 1921, between Great Britain and Ireland, and dealt with the establishment of the Constitution of the Irish Free State. The Statute of Westminster, 1931, was passed on the 11th December, 1931. His lordship read s. 2 (1) and (2), and said that on the 15th November, 1933, the Oireachtas enacted the Constitution (Amendment No. 22) Act, 1933, amending Article 66 of the Constitution so as to terminate the right of appeal to His Majesty in Council. It was clear that, if that last-mentioned amending Act was valid, the petition must fail because the amendment of the Constitution embodied in that Act must bar the right of appeal to the King in Council, if it was effective. By virtue of the Statute of Westminster, Article 66 of the Constitution had been validly amended with the result that the proviso to that Article was removed and appeals to the King in Council were now prohibited. The position might be summed up as follows: (1) The Treaty and the Constituent Act respectively formed parts of the statute law of the United Kingdom, each of them being parts of an Imperial Act; (2) Before the passing of the Statute of Westminster it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty because the Colonial Laws Validity Act forbade a Dominion Legislature to pass a law repugnant to an Imperial Act; (3) The effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State Legislature by reason of the Colonial Laws Validity Act. That Legislature could now pass Acts repugnant to an Imperial Act. In the present case they had done so. The simplest way of stating the situation was to say that the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty, and that, as a matter of law, they had availed themselves of that power. Whatever might be the position of the King's prerogative if it were left as a matter of common law, it was here in this particular respect and in this particular enactment made matter of Parliamentary legislation, so that the prerogative was *pro tanto* merged in the Statute of Westminster, and that statute gave powers of amending and altering the statutory prerogative. The petition failed and would be dismissed.

COUNSEL: *Wilfrid Greene*, K.C., *Blanco White* and *A. C. Newitt* for the appellants; *The Attorney-General* (Sir Thomas Inskip, K.C.) and *Wilfrid Lewis* were present to assist the Board; The Attorney-General for the Irish Free State and the other respondents did not appear and were not represented.

SOLICITORS: *Mackrell, Maton, Godlee and Quincey*; *the Treasury Solicitor.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Court of Appeal.

### Harold Wood Brick Co. *v.* Ferris.

Greer, Slesser and Roche, L.JJ. 21st and 22nd May, 1935.

SALE OF LAND—CONTRACT—TIME FIXED FOR COMPLETION—PURCHASER'S FAILURE TO COMPLETE—RE-SALE BY VENDOR—LOSS—DAMAGES.

Appeal from a decision of Swift, J.

On the 15th August, 1933, by a written agreement between the plaintiff company and the defendant, the defendant agreed to purchase certain land and buildings, together with machinery and utensils, for £9,500 "upon completion on or after August 31, 1933." It was also provided that "the purchase shall in any event actually be completed not later than September 15, 1933," and that in the event of non-completion, any deposit paid by the purchaser should be forfeited and the vendor might rescind the agreement and resell the property. It was further provided that if completion should not take place before the 31st August, the purchaser should pay 5 per cent. interest on the agreed purchase money. No deposit was in fact paid. The purchaser having failed to complete, the vendor's solicitors informed him in writing on the 13th November, 1933, that the delay amounted to a repudiation of the contract, that the property would be offered for sale and that he would be held liable for any loss resulting. A loss having resulted, an action was brought to recover the amount of it and Swift, J., held that the vendor was entitled to damages for breach of contract.

GREER, L.J., dismissing the appeal, said that the learned judge was right in holding that the defendant had repudiated the contract by refusing to carry out an essential term. Time was of the essence of the contract and the vendor was entitled to damages.

Slesser and Roche, L.JJ., agreed.

COUNSEL: *Roxburgh*, K.C., *Valentine Holmes* and *T. G. Roche*; *Vaisey*, K.C., and *Done*.

SOLICITORS: *Andrew, Purves, Sutton & Creery*; *Reynolds, Sons & Gorst.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

### Faraday *v.* Auctioneers and Estate Agents Institute of the United Kingdom.

Eve, J. 26th June, 1935.

ESTATE AGENTS INSTITUTE—VIOLATION OF RULES—DECLARATION—INJUNCTION.

In this action by Mr. Philip Michael Faraday, rating expert, against the Auctioneers and Estate Agents Institute of the United Kingdom, the plaintiff claimed a declaration that he had not violated the rule contained in Art. 38 (1) of defendants' articles of association. The article reads as follows: "No member shall establish or join either as principal or assistant any commercial firm or undertaking for the purpose of carrying on or assisting to carry on professional business as an adjunct to or in connection with the commercial business of such firm." Mr. Faraday also claimed an injunction restraining the defendants and their officers from acting under the following resolution purporting to have been passed by the council of the defendants: (*a*) That unless before 1st February, 1935, Mr. Faraday satisfies the council that he has determined his association with Harrods, Ltd., his membership of the Institute will be suspended as from that date until the expiration of his contract with Harrods, Ltd.; (*b*) Unless prior to 1st February, 1935, he will give an undertaking to the council that he will not in any event renew his association with Harrods the council will have no alternative to exercising its powers of expulsion. Counsel for the plaintiff, on opening the case, said Mr. Faraday asked for an injunction to restrain the defendant institute from acting on a resolution expelling him from membership unless he complied with certain stipulations. The vital distinction, said counsel, was that while Faraday had joined with Harrods or associated with them he had not joined the firm. When one joined a firm it was as partner or assistant, and in the latter case he became a servant of the firm. In cross-examination Mr. Faraday agreed that Art. 38 (1) had long been a rule of the institute, and though an amendment had been proposed to make it less rigorous it was rejected by a large majority.

EVE, J., in giving judgment for the defendants, said that the question was whether Mr. Faraday attached himself to

Harrods so as to break Art. 38 (1). He clearly had done so. The language of the rule seemed to be perfectly plain. Obviously the arrangement which Mr. Faraday had made with Harrods, the way in which the business was conducted and the extent to which the burden of it rested on his shoulders showed that his attachment to the firm was to enable the proprietors of the undertaking to gain such profit as could be gained by acting in a professional capacity for their clients. It was quite impossible to read the language of the rule and to hear the evidence without seeing what was meant, and that Mr. Faraday's conduct was entirely inconsistent with the rule. In those circumstances the plaintiff was not entitled to the declaration or the injunction for which he asked, and the action must be dismissed with costs. It was agreed that the operation of the resolution expelling the plaintiff from the institute should be suspended pending a possible appeal.

Counsel: *Sir William Jowitt*, K.C., *Lionel Cohen*, K.C., and *Frederick Grant*; *Gavin Simonds*, K.C., and *Roger Turnbull*; *Colin Pearson*.

Solicitors: *Richardson, Sadler & Co.*; *Norton, Rose, Greenwell & Co.*; *R. S. Fraser & Co.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### *In re* City of Manchester (Ringway Airport) Compulsory Purchase Order, 1934.

Branson, J. 27th May, 1935.

Local Government—Land—Compulsory Purchase Order—Opposition—Interests of Opponents to be Substantially Prejudiced—Public Inquiry—Presence of Assessor—Public Works Facilities Act, 1930 (20 & 21 Geo. 5, c. 50, 1st Sched., Pt. III, para. 2.

This was an application by the Cheshire County Council, Altrincham Urban District Council, and other urban and rural district councils in the County of Cheshire, and Henry Philips Greg, that an order known as the City of Manchester (Ringway Airport) Compulsory Purchase Order, 1934, be quashed. The order was made by the Manchester Corporation on the 25th July, 1934, and confirmed by the Secretary of State for Air on the 8th February, 1935, the making and confirmation being respectively under s. 2 and Pt. II of the 1st Sched. of the Public Works Facilities Act, 1930. The grounds of the application were that the order in question as confirmed was not within the powers conferred by the Public Works Facilities Act, 1930, and that the Minister had no jurisdiction to adjudicate on, or to confirm, the order; that the comparative merits of extending the existing Barton Aerodrome of the Manchester Corporation and establishing a new aerodrome on a site at Ringway were the principal matters in dispute, and that on those matters a report had been considered by the Secretary of State, which had been made by Wing-Commander Dermott Lang Allen on his inspection of the site at Ringway before the public inquiry held on the 9th October, 1934; that the inspection of the site at Ringway was carried out in the absence of any opponents of the Ringway site; that the public local inquiry had not been held in compliance with the provisions of the Public Works Facilities Act, 1930, because, although the inspector appointed to hold the inquiry was Mr. G. Ewart Rhodes, it had in fact been held before Mr. Rhodes and Wing-Commander Allen as assessor to assist the inspector on technical questions regarding aviation.

Branson, J., said, first, that the greatest care was taken both by the Town Clerk and by those who dealt with the Air Council's reply not to prejudge any issue which might arise at a public inquiry if, as was then probable, a public inquiry should become necessary. In their correspondence the Air Council said that their conclusions were general and provisional, and that the results of a public inquiry might influence the views finally adopted by the Air Council. A further question was raised in the present case which had not so far been expressly dealt with by the courts. Paragraph 2 of Pt. III of the 1st Sched. to the Public Works Facilities Act, 1930, provided for the quashing of an order if the court was satisfied that it "was not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by any requirement of this Act not having been complied with . . ." It was contended that if it appeared that the Minister had failed in any particular to act judicially in making the order, then the order was not within the powers of the Act, and must be quashed, whether the interests of the applicant had been substantially prejudiced or no. In his (his lordship's) opinion, that contention was unsound. Paragraph 2 was, perhaps, not very happily expressed. The power to quash was made discretionary in both cases referred to—even, that was to say, if it appeared that the order was not within the Act. In his opinion the manifest intention of the statute was that the order should not be quashed on either ground unless it appeared that the interests of the applicant had been substantially prejudiced by the irregularity complained of. Further, there was nothing in the Act of 1930, or in any of the Acts referred to therein, which dealt with the holding of public local inquiries which would prevent the appointment of two inspectors, or of an inspector and an assessor. Appeal against the order dismissed, with costs.

Counsel: *Sir Stafford Cripps*, K.C., *S. G. Turner*, K.C., and *W. A. Macfarlane*, for the applicants; *The Attorney-General* (Sir Thomas Inskip, K.C.), and *Wilfrid Lewis*, for the Secretary of State for Air; *Tyldesley Jones*, K.C., and *Redmond Barry*, for the Manchester Corporation.

Solicitors: *Gregory, Rowcliffe & Co.*, for *Geoffrey C. Scrimgeour*, Chester; *The Treasury Solicitor*; *Sharpe, Pritchard and Co.*, for *F. E. W. Howell*, Manchester.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

### Mountford *v.* London County Council.

Porter, J. 28th May, 1935.

Local Government—Transferred Officers—Superintendent Gardener—Dismissed by New Local Authority — Re-engaged at Reduced Wage — Compensation Claim Fails—Local Government Act, 1929 (19 Geo. 5, c. 17), s. 121.

The plaintiff, Mr. Mountford, was employed by the Lewisham Board of Guardians as a superintendent gardener at a wage of £4 a week, plus emoluments of £91 10s. a year. The Lewisham Board of Guardians were taken over under the Local Government Act, 1929, and their functions were thereafter exercised by the London County Council. Under the Act of 1929, by s. 19, the officers were transferred—Mr. Mountford being an officer within the meaning of that section—and the rights of the officers so transferred were determined by ss. 121 and 123 of the Act of 1929. Some time after the transference of Mr. Mountford's services to the London County Council, the latter considered that his wages were too high, and they sent him a notice on the 7th March, 1933, stating that his wages would be reduced from £4 to 32s. a week, and they also gave him notice of dismissal so that a fresh service might begin under a fresh agreement at the new wage. The reduction of his wage to 32s. was apparently a mistake, and by a notice of the 11th May, 1933, his wage was put at 60s. a week. Mr. Mountford agreed to accept that wage subject to his rights under the Act, and he put in a claim for compensation to the London County Council, under s. 123 of the Act. The London County Council said that s. 121 of the Act did not in itself, upon its true construction, give any rights to the applicant to get damages or compensation from that court.

Porter, J., said that s. 121 provided that: "Every transferred officer shall hold office by the same tenure and on the same conditions as immediately before the appointed day, and while performing similar duties shall, in respect thereof, receive not less salary or remuneration than the salary or

remuneration to which he would have been entitled if this Act had not been passed." He had come to the conclusion that Mr. Mountford had no right to compensation or damages under that section. Following the case of *Rowsell* v. *Metropolitan Water Board* (79 J.P. 267), he held that a man transferred was employed by the fresh authority on exactly the same terms as by the old authority. If the old authority were entitled to dismiss him and re-engage him or anybody else, so were the fresh authority. In other words, he was put in no better position *vis-a-vis* the fresh authority than he was in with regard to the old authority. Action dismissed.

COUNSEL: *R. M. Montgomery*, K.C., and *Alan Pugh*, for the plaintiff; *A. M. Trustram Eve*, K.C., and *H. B. Williams*, for the defendants.

SOLICITORS: *Stutfield & Son; J. R. Howard Roberts, Solicitor*, L.C.C.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## London County Council *v.* Berkshire County Council.

Lord Hewart, C.J., Humphreys and Lawrence, JJ. 18th June, 1935.

POOR LAW—RATE-AIDED MENTAL PATIENT—SETTLEMENT—MOTHER DESERTED BY FATHER—PATIENT WHILE UNDER SIXTEEN RESIDING APART FROM MOTHER FOLLOWS FATHER'S SETTLEMENT—POOR LAW ACT, 1930 (20 & 21 Geo. 5, c. 17), s. 93 (2).

Appeal, upon a case stated, against a decision of Reading Quarter Sessions dismissing an appeal by the London County Council against an order of adjudication made under s. 289 of the Lunacy Act, 1890, by Berkshire Justices on 21st November, 1933; by the order it was adjudged that the last legal settlement of Dorothy Pring, a rate-aided mental patient, was, on and since 27th August, 1932, in the County of London, and that the appellants should pay to the respondents certain sums for expenses already accrued, and to the Berkshire Mental Hospital reasonable expenses for the future maintenance of the patient while there. The patient was a legitimate child born on 23rd October, 1906, at Reading, where she resided with her parents until April, 1910. From then until January, 1916, she resided with her parents at various addresses in London. In that month, the father deserted his wife and child, his whereabouts remaining thenceforward unknown. The mother became irremovable from London by virtue of the proviso to s. 93 (2) of the Poor Law Act, 1930. From 23rd October, 1906, until 27th September, 1919, the County Borough of Reading was the place of the last legal settlement of the patient and her parents. From the latter date until December, 1923, the patient resided continuously in London without receiving any poor relief. Until October, 1921, being under sixteen years of age, she lived with her mother and was at that time irremovable from London by virtue of s. 93 (4) of the 1930 Act. From October, 1921, to April, 1923, during which period she reached the age of sixteen, she lived away from her mother. Thereafter, until December, 1923, she again lived with her mother. The patient's residences from December, 1923, to 25th August, 1932, when she was admitted to the Berkshire Mental Hospital, were immaterial. The contentions of the parties sufficiently appear below.

Lord HEWART, C.J., said that the real pinch of the case was in the respondents' contention that, from October, 1921, to April, 1923, although not residing with her mother, the patient was irremovable from London because her settlement was in Reading, which was her mother's own settlement, her mother being irremovable from London by virtue of the proviso to s. 93 (2) of the Poor Law Act, 1930. The important enactment was in that sub-section; but in s. 85 the fundamental proposition was laid down that, until a person acquired a settlement of his own or derived one from a husband, that person, if a legitimate child, should take and follow his father's settlement up to the age of sixteen, and should retain the settlement which he had at that age. The wording of s. 92 (3) was odd, but clearly referred to a husband or a wife as the case might be. He (his lordship) could only conclude that the body of the sub-section, so far as the wife was concerned, dealt with the case where the husband was dead. The proviso dealt with the case where a married woman was deserted. But if the father was alive, the mother could not confer upon the child the benefit of the irremovability belonging to herself. In *Reg.* v. *St. Mary, Islington, Overseers*, L.R. 5 Q.B. 445, a contention similar to the present had been advanced, and Cockburn, C.J., had said, at p. 448: "the desertion by the father does not make the mother the head of the family." The mere desertion of the father did not *per se* prevent the operation of the law that a legitimate child up to the age of sixteen took and followed the settlement of the father. The contrary interpretation of s. 93 (2) would have a ridiculous result, because the sub-section dealt at once with removability and irremovability so that it would become possible to say that a child for example was removable because of the father's removability and irremovable because of the mother's irremovability. Therefore, applying the doctrine laid down in *Reg.* v. *St. Mary, Islington, Overseers*, regard could not be had to the period, from October, 1921 to October, 1922, during which the patient, being under sixteen years of age and not residing with her mother, was therefore following the settlement of her father. When that period was subtracted, there remained insufficient time to give the patient a settlement in London, and the appeal must therefore be allowed.

HUMPHREYS and LAWRENCE, JJ., agreed.

COUNSEL: *R. M. Montgomery*, K.C., and *A. Ralph Thomas*, for the appellants; *E. Gilbert Woodward*, for the respondents.

SOLICITORS: *J. R. Howard Roberts; H. J. C. Neobard*, Clerk of Berkshire County Council.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## Cook *v.* Alfred Plumpton Limited; Same *v.* Henderson.

Lord Hewart, C.J., Hawke and Lawrence, JJ. 21st June, 1935.

ROAD TRAFFIC—GOODS MOTOR VEHICLE—LIMITATION OF PERIODS OF CONTINUOUS DRIVING—"CONTINUOUS PERIOD"—"AMOUNTING IN THE AGGREGATE"—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43) s. 19 (i), (ii), (2) (*a*).

Appeals, upon a case stated, from a decision of Sunderland Justices dismissing an information preferred by the appellant on behalf of the Traffic Commissioners for the Northern Area, against the respondent company for that they, being the owners of a certain motor lorry, unlawfully permitted one, James Henderson, to drive it for continuous periods amounting in the aggregate to more than 11 hours in the twenty-four hours beginning at 7.30 a.m. on 3rd January, 1935, contrary to s. 19 (1) of the Road Traffic Act, 1930. Another information charged the company with a similar offence committed the next day, and informations were preferred against the driver, Henderson, in respect of the same matters. At the hearing of the informations, the following facts were proved or admitted: on 3rd January, 1935, Henderson worked for the company from 7.30 a.m. to 1 p.m., rested from 1 p.m. to 2 p.m., worked from 2 p.m. to 6 p.m., rested from 6 p.m. to 6.30 p.m., and worked from 6.30 p.m. to 9.30 p.m. The total of working hours for the day was accordingly twelve and a half. On 4th January, Henderson worked for periods, divided by rests of not less than half an hour each, totalling twelve hours. For the informant it was contended that the company and the driver had contravened s. 19 (1) (*b*) of the Road Traffic Act, 1930, which prohibited the company from permitting Henderson to drive, and Henderson himself from driving, for continuous periods amounting in the aggregate to more than eleven hours in any period of twenty-four hours beginning two hours after midnight. For the defendants it had been

contended that the periods of driving, having been separated by rest-periods of at least half an hour, could by virtue of s. 19 (2) of the Act not be deemed continuous periods, and that Henderson had accordingly not worked for periods aggregating more than eleven hours in the twenty-four hours. The justices were of opinion that in view of s. 19 (2) (*a*) of the Act, which provides that any two or more periods shall be deemed a continuous period unless separated by an interval of at least half an hour in which the driver is able to obtain rest and refreshment, no offence had been committed, and they dismissed the informations accordingly.

LORD HEWART, C.J., said that the cases were clear. The justices had apparently, and, no doubt, inadvertently, confused the expression " continuous period " with the expression " aggregate of continuous periods." They had held that the words of s. 19 (2) (*a*), which had reference to one continuous period, were equally applicable in the case of an aggregate of continuous periods. That construction being contrary to the plain words of the statute, the appeal must be allowed and the case must go back to the justices with a direction to them to find the offences proved.

HAWKE and LAWRENCE, JJ., agreed.

COUNSEL: *George Bankes*, for the appellant; there was no appearance by, or on behalf of, the respondents.

SOLICITOR: *The Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# Parliamentary News.

## Progress of Bills.

### House of Lords.

Ascot District Gas and Electricity Bill.
Read Second Time. [1st July.
Assurance Companies (Winding-up) Bill.
Read First Time. [3rd July.
Baildon Urban District Council Bill.
Royal Assent. [27th June.
Blackpool Improvement Bill.
Read Second Time. [1st July.
Bognor Gas and Electricity Bill.
Read Second Time. [1st July.
Bridgwater Corporation Bill.
Read Third Time. [1st July.
Bristol Tramways Bill.
Royal Assent. [27th June.
Camborne Water Bill.
Read Third Time. [1st July.
Glasgow Corporation Order Confirmation Bill.
Read Third Time. [2nd July.
Government of India Bill.
In Committee. [3rd July.
Harrogate Corporation Bill.
Reported, with Amendments. [27th June.
Ipswich Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [1st July.
Lanarkshire County Council Order Confirmation Bill.
Read Third Time. [2nd July.
London and North Eastern Railway Bill.
Read Third Time. [1st July.
London Midland and Scottish Railway Order Confirmation Bill.
Read Third Time. [2nd July.
London Passenger Transport (Agreement) Bill.
Read First Time. [3rd July.
Maidstone Corporation Bill.
Reported, with Amendments. [26th June.
Marriages Provisional Order Bill.
Read First Time. [1st July.
Metropolitan Water Board Bill.
Reported, with Amendments. [2nd July.
Ministry of Health Provisional Order Confirmation (Croydon) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Eastbourne) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Harrogate) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Huntingdon) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Metropolis Water) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Morley) Bill.
Read Third Time. [2nd July.
Ministry of Health Provisional Order Confirmation (Norwich) Bill.
Read Third Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Ottershaw Joint Hospital District) Bill.
Read Third Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Oxford) Bill.
Read Third Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Pwllheli) Bill.
Read Third Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Watford) Bill.
Amendments reported. [3rd July.
Ministry of Health Provisional Order (Cuddington Joint Hospital District) Bill.
Read First Time. [1st July.
Ministry of Health Provisional Order (East Surrey) Bill.
Read First Time. [1st July.
Ministry of Health Provisional Order (Fylde Preston and Garstang Joint Smallpox Hospital District) Bill.
Read Third Time. [3rd July.
Ministry of Health Provisional Order (Guildford) Bill.
Reported, without Amendment. [3rd July.
Ministry of Health Provisional Order (Harpenden Water) Bill.
Read First Time. [1st July.
Ministry of Health Provisional Order (Leigh Joint Hospital District) Bill.
Amendments made. [3rd July.
Ministry of Health Provisional Order (Monks and Princes Risborough Water) Bill.
Read First Time. [1st July.
Ministry of Health Provisional Order (Rainham Water) Bill.
Read First Time. [1st July.
Ministry of Health Provisional Order (South Oxfordshire Water) Bill.
Read First Time. [1st July.
Poole Road Transport Bill.
Read Third Time. [1st July.
Portsmouth Corporation (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [3rd July.
Rhyl Urban District Council Bill.
Read Third Time. [2nd July.
St. Bartholomew's Hospital Bill.
Read Third Time. [1st July.
Sheffield Corporation Tramways Provisional Order Bill.
Reported, without Amendment. [3rd July.
South Essex Waterworks Bill.
Read Third Time. [1st July.
South Shields Corporation Bill.
Reported, with Amendments. [1st July.
Southern Railway Bill.
Read Third Time. [1st July.
Sunderland Corporation Bill.
Read First Time. [27th June.
Superannuation Bill.
Royal Assent. [27th June.
University of Durham Bill.
Read Third Time. [2nd July.
Weymouth Waterworks Bill.
Read Third Time. [1st July.

### House of Commons.

Birmingham Corporation Bill.
Read Second Time. [1st July.
Bournemouth Gas and Water Bill.
Reported, with Amendments. [27th June.
Bridgwater Corporation Bill.
Read First Time. [1st July.
British Sugar [Subsidy] Bill.
Read First Time. [1st July.
Camborne Water Bill.
Read First Time. [1st July.
City of London (St. Paul's Cathedral Preservation) Bill.
Reported, with Amendments. [27th June.

Cotton Spinning Industry Bill.
Read First Time. [1st July.
Counterfeit Currency (Convention) Bill.
Read Third Time. [27th June.
Criminal Lunatics (Scotland) Bill.
Read Second Time. [2nd July.
Defence (Barracks) Bill.
Read Third Time. [1st July.
Exeter Corporation Bill.
Reported, with Amendments. [2nd July.
Gloucester Corporation Bill.
Reported, with Amendments. [1st July.
Halifax Extension Bill.
Read Second Time. [3rd July.
Housing (Scotland) Bill.
Read Third Time. [3rd July.
Hoylake Urban District Council Bill.
Read Second Time. [2nd July.
Ipswich Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [28th June.
London County Council (Money) Bill.
Reported, with Amendments. [27th June.
London Passenger Transport (Agreement) Bill.
Read Third Time. [2nd July.
London Passenger Transport Board (Finance) Bill.
Read First Time. [28th June.
Marriages Provisional Orders Bill.
Read Third Time. [28th June.
Milford Docks Bill.
Read Second Time. [1st July.
Ministry of Health Provisional Order Confirmation (Fylde Preston and Garstang Joint Smallpox Hospital District) Bill.
Read First Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Norwich) Bill.
Read First Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Ottershaw Joint Hospital District) Bill.
Read First Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Oxford) Bill.
Read First Time. [3rd July.
Ministry of Health Provisional Order Confirmation (Pwllheli) Bill.
Read First Time. [3rd July.
Ministry of Health Provisional Order (Cuddington Joint Hospital District) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (East Surrey Water) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (Harpenden Water) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (Monks and Princes Risborough Water) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (Rainham Water) Bill.
Read Third Time. [28th June.
Ministry of Health Provisional Order (South Oxfordshire Water) Bill.
Read Third Time. [28th June.
Poole Road Transport Bill.
Read First Time. [1st July.
Public Health (Water and Sewage) (Scotland) Bill.
Read Second Time. [2nd July.
St. Bartholomew's Hospital Bill.
Read First Time. [1st July.
Sunderland Corporation Bill.
Read Third Time. [27th June.
Unemployment Insurance (Crediting of Contributions) Bill.
Read First Time. [1st July.
West Riding of Yorkshire Mental Hospitals Board (Superannuation) Bill.
Reported, with Amendments. [27th June.
Weymouth and Melcombe Regis Corporation Bill.
Read Second Time. [1st July.
Weymouth Waterworks Bill.
Read First Time. [1st July.

## Questions to Ministers.

### TITHE RENT-CHARGE (ROYAL COMMISSION).

Mr. Oswald Lewis asked the Minister of Agriculture whether he will inquire when the Royal Commission on Tithe anticipate that they will be in a position to make their report.

Mr. Elliot: I am informed that the commission have completed the hearing of evidence, but that it is not possible to say when they will be in a position to present their report. [27th June.

# Societies.

## Inns of Court.

### CALLS TO THE BAR.

Wednesday, 3rd July, was Call Night at the Inns of Court. The following were called:—

#### Lincoln's Inn.

J. P. R. Oakes, Pembroke College, Oxford, B.A.; Syed Sajjad Zaheer, New College, Oxford, B.A. (Hons.); Rabindra Nath Mitter, Calcutta University, B.A.; W. H. D. Winder, University College, London, LL.M., and New College, Oxford, B.A., Barstow Scholarship, 1932; Mohammad Ahmad, London University, B.A. (Hons.), and Allahabad University, B.A.; Goolbanoo Nanabhai Cowasjee, Newnham College, Cambridge, B.A., and Rangoon University, B.A.; D. W. B. Maughan, Balliol College, Oxford, B.A.; A. A. J. Mango, Trinity College, Cambridge, B.A. (Hons.), M.A.; Dharmashila Lall (admitted as Dharmashila Jayaswal), London University, B.A. (Hons.), and Calcutta University, B.A. (Distinction), Benares University, M.A., and Dublin University (Higher Diploma in Education); Sachindra Nath Roychoudhury, Calcutta University, B.A.; Sachindra Nath Roy Chowdhry, Calcutta University, B.L.; Manmohan Mothabhai Jayakar, Bombay University, B.A.; R. W. G. Holdsworth, Brasenose College, Oxford, B.A., a Cholmeley Student of Lincoln's Inn; K. McGregor, New College, Oxford, B.A.; H. Burrowes; J. W. P. Clements; F. A. Suttill, London University, LL.B.; R. P. Bennett, Trinity College, Cambridge, B.A.; Beas Dev Sharma, London University and Punjab University, B.A.; Arjan Singh, Punjab University, B.A., and Rangoon University, B.L.; Kanhaiyalal Mehta, Agra University, B.A., and London University; J. L. Stewart, New College, Oxford, B.C.L., a Rhodes Scholar, and Toronto University, B.A.; Mian Tasadduque Husain, London University, Ph.D., and Punjab University, M.A.

#### Inner Temple.

A. McKisack, University College, Oxford, B.A.; G. May; University of London, LL.D.; D. O'Hagan, Clare College, Cambridge, B.A.; W. de Souza, University of London, I. Habibullah, Worcester College, Oxford, B.A.; T. H. Tilling, Pembroke College, Cambridge, B.A.; P. D. Cotes-Preedy, Pembroke College, Cambridge, B.A.; P. Watkin-Williams, Pembroke College, Cambridge; D. C. B. Deo, Trinity Hall, Cambridge, B.A.; R. B. H. Wyatt, Christ Church, Oxford, M.A.; A. H. Wood, St. Catherine's Society, Oxford, B.A.; P. A. Ferns, Peterhouse, Cambridge, B.A.; L. R. O'Hanlon; W. H. Hicks, University College of Wales, Aberystwyth, B.A., LL.B.; J. W. Hopkins, Trinity College, Cambridge, B.A.; W. W. Harding, Corpus Christi College, Cambridge, B.A.; R. P. F. Wilson, Christ Church, Oxford, B.A.; T. H. K. Berry, Queen's College, Oxford, B.A.; Miss L. H. M. MacGarvey; J. H. Vaughan, Christ Church, Oxford; C. H. Morgan; G. A. H. Pratt; Miss M. Muller, King's College, London; R. T. C. Waters, University College, London, LL.B.; B. N. Jajal, University College, London; S. T. Christian, University of London, B.A., LL.M.; A. V. Crane, University of London, LL.B.

#### Middle Temple.

G. L. Williams, holder of Studentship and Certificate of Honour awarded Trinity Examination, 1934, B.A., St. John's College, Cambridge, and LL.B., University of Wales, Harmsworth Law Scholar; N. R. Elliott, B.A., St. Catherine's College, Cambridge; H. Boggis-Rolfe, B.A., Trinity College, Cambridge; Bijay Kumar Banerji, M.A., Edinburgh University; Gim Hoe Lim; Bahadurali Kassam Suleman Verjee; W. L. Fearnehough, B.A. (Hons.), Queen's College, Oxford; C. de L. Inniss, B.A., Queen's College, Oxford; J. Ritchie, Magdalen College, Oxford; Cheow Choon Goh; A. E. W. Eastman, B.A., LL.B., of Howard University, Washington, D.C., U.S.A.; R. M. Smith, Merton College, Oxford; Udiavar Narayana Rao, M.A., of Madras University; H. R. Lintern, M.Sc., Bristol University; Bakhshi Huzoor Ali, B.A., Punjab University; R. L. Bayne-Powell, B.A., Trinity College, Cambridge; Marie B. Ohsan, LL.B., London University; Chunilal Bhagwandass Bhusri; Habibullah Akbarali Sidiki, B.A., LL.B., Bombay University; D. M. Wacher; R. E. Richardson, M.Sc., Ph.D., Sheffield University; A. Bond, LL.B., London University; A. G. Sharp, B.A. (1st class honours), Clare College, Cambridge, Harmsworth Law Scholar; Minoo Jehangirji Sethna, B.A., Bombay University; Kanjee Abdul Rasul, B.A., Rangoon University; Haim Ibn-Shamir; Sitaram Raoji Tawade, B.A. (Hons.), London University, and B.A., LL.B., Bombay University; Desai Hasmukhlal Bhogilal, B.A., LL.B., Bombay University.

GRAY'S INN.

V. M. C. Pennington, Holder of an Inns of Court Studentship, Council of Legal Education, Trinity, 1935, B.A., and sometime Scholar, Trinity College, Cambridge, Lord Justice Holker (Bacon) Scholar, Gray's Inn, 1931, Arden Prizeman, Gray's Inn, 1933, Henry Fellow, the University of Harvard, United States of America; J. Wood, LL.B., University of London; W. G. Williams, University of London; Mohomed Sulaiman Sait, B.A., Oriel College, Oxford; E. W. Walker, B.A., B.C.L., and sometime Demy, Magdalen College, Oxford; E. Rigby, Junior, B.A., Worcester College, Oxford; B. B. Riley, B.A., Keble College, Oxford; L. S. H. Jackson, B.A., Trinity Hall, Cambridge; D. P. Jones, LL.B., Victoria University of Manchester; F. E. Jones, M.A., and sometime Scholar, Gonville and Caius College, Cambridge, Entrance Scholar, Gray's Inn, 1931; F. W. Jessup, B.A., University of London; J. McCaig, University of London; Elizabeth H. Forbes; Mary E. Barber, B.A., Somerville College, Oxford; Yaaqov Klinger, LL.B., University of London; Beryl M. Watson, University of London; A. M. Isaacs, University of London; H. J. S. French, B.A., Christ Church, Oxford; D. W. O'Connor, University of London; G. W. A. Kayser; A. Hooton, B.A., Queens' College, Cambridge; N. Haboba, LL.B., Victoria University of Manchester; E. Salant, LL.B., University of London.

## Inner Temple.

GRAND DAY.

Wednesday, 26th June, being the Grand Day of TrinityTerm at the Inner Temple, the Treasurer (Mr. A. M. Langdon, K.C.) and the Masters of the Bench entertained at dinner the following guests:—Lord Desborough, Lord Rockley, Lord Blanesburgh, Lord Thankerton, Mr. R. G. Menzies, K.C., Mr. Justice Swift, Brigadier-General Sir Joseph A. Bryne, Sir Atul Chatterjee, Sir George Murray, Mr. Laurence Binyon, Treasurer of Gray's Inn, Master of the Temple, Mr. Sydney Tatchell, Mr. E. E. Bird, Mr. G. Thalben Ball, Mr. S. Lewis Langdon, and the Sub-Treasurer. The following Masters of the Bench were present:—Sir Francis Taylor, K.C., Sir Lancelot Sanderson, Lord Hanworth of Hanworth (Master of the Rolls), Mr. A. W. Bairstow, K.C., Lord Justice Roche. Mr. Alexander Grant, K.C., Sir Leslie Scott, K.C., Mr. F. P. M. Schiller, K.C., Lord Wright of Durley, Mr. R. F. Bayford, K.C., Judge Konstam, K.C., Mr. Justice Bucknill, Mr. S. R. C. Bosanquet, K.C., Mr. W. O. Willis, K.C., Master Sir George Bonner, Archbishop of Canterbury (Hon.), Mr. R. A. Gordon, K.C., Mr. Charles Doughty, K.C., Mr. C. N. Tindale Davis, Mr. C. T. Le Quesne, K.C., Mr. F. J. Wrottesley, K.C., Mr. R. P. Hills, K.C., Mr. Valentine Holmes, and Mr. C. J. Conway, K.C.

## Middle Temple.

GRAND DAY.

Friday, 28th June, being the Grand Day of Trinity Term at the Middle Temple, the Masters of the Bench entertained at dinner the following guests: The Lord Mayor, The Earl of Harrowby, Viscount Wakefield, Lord Southborough, Sir Eric Geddes, Sir Dawson Bates, M.P., Sir Thomas Inskip (Attorney-General), Sir Merrik Burrell, Sir Hugo Cunliffe-Owen, Sir Holburt Waring, Sir Evan Williams, Mr. E. W. Beatty (Chancellor of McGill University), Colonel Sir George McLaren Brown, Sir James Martin, Major Sir William Prescott, the Vice-Chancellor of Oxford University, the Vice-Chancellor of Cambridge University, the Vice-Chancellor of the University of London, Mr. Hamilton Fulton, Mr. Bernard Campion, K.C. (Treasurer of Gray's Inn), Mr. B. I. Franklin-Adams, Dr. John Murray, Mr. E. Clement Davies, K.C., M.P., Mr. William Cash, Mr. Arthur Collins, Mr. Charles R. Fowler (American Bar Association), Mr. Theodore W. Reath (American Bar Association), Mr. Augustus L. Searle (American Bar Association), and Dr. Lucas Johnstone.

The following Masters of the Bench were also present: The Master Treasurer (Sir Lynden Macassey, K.C.), Judge Ruegg, K.C., Sir Ellis Hume-Williams, K.C., Mr. Justice Horridge, Viscount Dunedin, Judge Sir Alfred Tobin, K.C., Mr. L. De Gruyther, K.C., Mr. Edward Shortt, K.C., Sir Holman Gregory, K.C., Sir Cecil Hurst, K.C., Mr. Heber L. Hart, K.C., Mr. Justice Hawke, The Hon. S. O. Henn Collins, K.C., Mr. J. Bruce Williamson, Judge Dumas, Mr. S. J. Bevan, K.C., Mr. A. M. Sullivan, K.C., Judge Sir Thomas Artemus Jones, K.C., Mr. W. E. Vernon, Mr. Cecil Whiteley, K.C., Mr. W. Craig Henderson, K.C., Sir Edward Tindal Atkinson, Sir Ian Macpherson, K.C., Mr. J. Bowen Davies, K.C., Sir Thomas Molony, with the Master of the Temple, the Rev. J. F. Clayton (Reader at the Temple Church), and the Under Treasurer (Mr. T. F. Hewlett).

## Lincoln's Inn.

GRAND DAY.

Tuesday, 2nd July, being the Grand Day of Trinity Term at Lincoln's Inn, the Treasurer (Sir Felix Cassel, K.C.) and the Masters of the Bench entertained at dinner the following:—The Swiss Minister, Lord Atkin, Lord Moynihan, Lord Trenchard, Field-Marshall Lord Milne, Sir James Swinburne, Air Chief Marshall Sir Edward Ellington, Sir Edward Tindal Atkinson, Sir George Schuster, Colonel H. A. Bruce, Sir Joseph Priestley, K.C., Prebendary Percival, M. Olivier Jallu (representing the Bâtonnier of the Bar of Paris), Mr. A. M. Langdon, K.C. (Treasurer of Inner Temple), Mr. Bernard Campion, K.C. (Treasurer of Gray's Inn), Professor W. G. Constable, Mr. Kenneth McKenzie Clark, Mr. Harry R. Blaker (President of The Law Society), Mr. A. E. W. Mason, the Chaplain (the Rev. Eric Abbott), and the Under-Treasurer (Sir Reginald Rowe). The Benchers present on the occasion, in addition to the Treasurer, were:—Sir Alfred Hopkinson, K.C., Lord Warrington of Clyffe, Sir Paul Lawrence, Mr. C. E. E. Jenkins, K.C., Sir Thomas Hughes, K.C., Sir Frederick Pollock, K.C., Mr. Justice Clauson, Mr. F. H. L. Errington, Mr. Theobald Mathew, Sir Arthur Colefax, K.C., Sir Arthur Underhill, Lord Justice Maugham, Lord Tomlin, Mr. Justice Atkinson, Judge Thompson, K.C., Mr. J. F. W. Galbraith, M.P., Mr. Justice Luxmoore, Sir Gerald Hurst, K.C., M.P., Sir Percival Clarke, Mr. W. E. Tyldesley Jones, K.C., His Honour Hugh Sturges, K.C., Mr. Justice Stafford Crossman, Mr. Wilfrid Hunt, Mr. Tom Eastham, K.C., Mr. A. L. Ellis, Mr. Justice Bennett, Mr. Gavin Simonds, K.C., Mr. H. B. Vaisey, K.C., Mr. R. H. Hodge, Mr. F. D. Morton, K.C. Mr. C. W. Turner, Mr. R. A. Willes, Mr. L. L. Cohen, K.C., Sir George Rankin, and Mr. W. C. Cleveland-Stevens, K.C.

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased by Letters Patent under the Great Seal, dated 1st July, to appoint the EARL OF ONSLOW, Chairman of Committees of the House of Lords, Mr. RAMSAY MACDONALD, Lord President of the Council, LORD HEWART, Lord Chief Justice of England, and LORD HANWORTH, Master of the Rolls, to be Commissioners for the care and custody of the Great Seal of the Realm during any absence of VISCOUNT HAILSHAM, Lord High Chancellor of Great Britain, from the United Kingdom.

The Lord Chancellor has appointed Mr. LLEWELLYN FRANCIS to be the Registrar of Cardiff and Barry County Court and District Registrar in the District Registry of the High Court of Justice in Cardiff, as from 1st July, 1935. Mr. Francis was admitted a solicitor in 1920.

The Lord Chancellor has appointed Mr. ERIC TOM LAMBERT to be the Registrar of Deal and Dover County Courts and District Registrar in the District Registry of the High Court of Justice in Dover, as from 1st July, 1935. Mr. Lambert was admitted a solicitor in 1903.

The Lord Chancellor has appointed Mr. FRANK MAINWARING FURLEY to be the Registrar of Ashford County Court, as from the 1st July, 1935. Mr. Furley was admitted a solicitor in 1903.

The Attorney-General has appointed Mr. VALENTINE HOLMES, of Goldsmith buildings, Temple, Junior Counsel to the Treasury (Common Law) and Junior Counsel to the Board of Trade, the Board of Customs and Excise, the Ministry of Health, and the Ministry of Transport, in succession to Mr. WILFRID LEWIS, who has been appointed a Judge of the King's Bench Division.

Mr. Justice WILFRID LEWIS had the honour of being received by the King on the 1st July, when His Majesty conferred upon him the honour of Knighthood.

Sir EDWARD BEATTY, G.B.E., K.C. (Chancellor of McGill University, and President of the Canadian Pacific Railway), has been elected an Honorary Master of the Bench of the Middle Temple.

Mr. A. C. FABYAN WINDEATT, solicitor, Plymouth, has been appointed Clerk of Padstow Urban District Council. Mr. Windeatt was admitted a solicitor in 1923.

Mr. ALAN CROOME NICHOLS, LL.B., first Assistant Solicitor, Hastings, has been appointed Deputy Town Clerk of Acton. Mr. Nichols was admitted a solicitor in 1931.

Mr. E. J. O. GARDINER, Assistant Solicitor to Guildford Corporation, has been appointed Deputy Town Clerk of Gravesend. Mr. Gardiner was admitted a solicitor in 1933.

## Professional Announcements.

**(2s. per line.)**

LEE & ARTHUR SMITH, of 18, Newhall-street, Birmingham, 3, and SMYTHE, ETCHES & CO., of York House, 38, Great Charles-street, Birmingham, 3, announce that they have amalgamated their practices under the firm name of LEE, CROWDER & CO. Until suitable accommodation is available they will continue to practise at 18, Newhall-street and at 38, Great Charles-street, Birmingham, as before.

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

## Notes.

Mr. Maxwell Fyfe, K.C., has been unanimously adopted prospective Conservative candidate for the West Derby Division of Liverpool, at the by-election caused by the death of Sir John Sandeman Allen.

A Blackstone Prize of £105 (twelve of which are offered annually to students of the Middle Temple by the Masters of the Bench) has been awarded to Mr. R. H. Landman, of Trinity College, Cambridge, for real property and conveyancing.

Mr. R. E. Knocker, Town Clerk of Dover since 1907, will resign at the end of September and will be succeeded by Mr. S. R. H. Loxton, the Deputy Town Clerk. The Town Council will retain Mr. Knocker's services as adviser for a year.

Judge Crawford, who was compulsorily retired not long ago on account of his age, which is seventy-five, is to sit on the Bench again temporarily. He will preside over one of the two courts at Bow County Court on the last three Wednesdays of this month, having been appointed to deputise for Judge Konstam.

Mr. M. P. Griffith-Jones, the magistrate at Woolwich Police Court, presented a cheque and a framed photograph to Mr. Thomas Brown last Monday, on his retirement after forty years' public service, for thirty-five of which he was usher and office keeper at the court. The gifts were from the court, staff and friends.

A notice regarding the amalgamation of two prominent firms of solicitors in Birmingham appears under "Professional Announcements," in this issue. The firm of Lee & Arthur Smith was founded in Birmingham by Thomas Lee in or about the year 1760, and, with the exception of the period 1859 to 1876, there has always been a Lee as a partner in the firm. The firm of Smythe, Etches & Co. dates back to about the year 1765, when it was founded by George Hollington Barker, who was succeeded by his son, George Barker, F.R.S. Mr. John Fairfax Crowder, a partner in the firm, is the present Secretary of the Birmingham Law Society.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP I. MR. JUSTICE EVE. Witness Part I. | MR. JUSTICE BENNETT. Witness Part II. |
|---|---|---|---|---|
| | Mr | Mr. | Mr. | Mr. |
| July 8 | Ritchie | Hicks Beach | *Andrews | *Ritchie |
| ,, 9 | Blaker | Andrews | *More | Andrews |
| ,, 10 | More | Jones | *Ritchie | *More |
| ,, 11 | Hicks Beach | Ritchie | Andrews | Ritchie |
| ,, 12 | Andrews | Blaker | *More | *Andrews |
| ,, 13 | Jones | More | Ritchie | More |
| | GROUP I. MR. JUSTICE CROSSMAN. Non-Witness | MR. JUSTICE CLAUSON Non-Witness | GROUP II. MR. JUSTICE LUXMOORE Witness Part II. | MR. JUSTICE FARWELL. Witness Part I. |
| | Mr. | Mr. | Mr. | Mr. |
| July 8 | More | Jones | Hicks Beach | *Blaker |
| ,, 9 | Ritchie | Hicks Beach | *Blaker | *Jones |
| ,, 10 | Andrews | Blaker | Jones | *Hicks Beach |
| ,, 11 | More | Jones | *Hicks Beach | *Blaker |
| ,, 12 | Ritchie | Hicks Beach | Blaker | Jones |
| ,, 13 | Andrews | Blaker | Jones | Hicks Beach |

*The Registrar will be in Chambers on these days and also on the days when the Court is not sitting.

## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 11th July, 1935.

| | Div. Months. | Middle Price 3 July 1935. | Flat Interest Yield. £ s. d. | ‡Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after | FA | 115½xd | 3 9 3 | 3 0 5 |
| Consols 2½% | JAJO | 86½ | 2 17 10 | — |
| War Loan 3½% 1952 or after | JD | 106⅞ | 3 5 6 | 2 19 8 |
| Funding 4% Loan 1960-90 | MN | 118½ | 3 7 6 | 2 18 10 |
| Funding 3% Loan 1959-69 | AO | 104 | 2 17 8 | 2 15 5 |
| Victory 4% Loan Av. life 25 years | MS | 117 | 3 8 5 | 3 0 4 |
| Conversion 5% Loan 1944-64 | MN | 122 | 4 2 0 | 2 1 6 |
| Conversion 4½% Loan 1940-44 | JJ | 112 | 4 0 4 | 2 2 10 |
| Conversion 3½% Loan 1961 or after | AO | 108½ | 3 4 6 | 3 0 5 |
| Conversion 3% Loan 1948-53 | MS | 106 | 2 16 7 | 2 9 1 |
| Conversion 2½% Loan 1944-49 | AO | 102½ | 2 8 9 | 2 3 3 |
| Local Loans 3% Stock 1912 or after | JAJO | 97 | 3 1 10 | — |
| Bank Stock | AO | 369½ | 3 4 11 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 88½ | 3 2 2 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 97 | 3 1 10 | — |
| India 4½% 1950-55 | MN | 113½ | 3 19 4 | 3 6 10 |
| India 3½% 1931 or after | JAJO | 99 | 3 10 8 | — |
| India 3% 1948 or after | JAJO | 87 | 3 9 0 | — |
| Sudan 4½% 1939-73 Av. life 27 years | FA | 118xd | 3 16 3 | 3 9 3 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 114 | 3 10 2 | 2 16 9 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 114xd | 3 10 2 | 2 17 10 |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 111 | 4 1 1 | 2 12 6 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 108 | 3 14 1 | 3 8 10 |
| *Australia (C'mm'nw'th) 3¾% 1948-53 | JD | 103 | 3 12 10 | 3 9 3 |
| Canada 4% 1953-58 | MS | 113 | 3 10 10 | 3 1 0 |
| *Natal 3% 1929-49 | JJ | 100 | 3 0 0 | 3 0 0 |
| *New South Wales 3½% 1930-50 | JJ | 100 | 3 10 0 | 3 10 0 |
| *New Zealand 3% 1945 | AO | 101 | 2 19 5 | 2 17 7 |
| †Nigeria 4% 1963 | AO | 115 | 3 9 7 | 3 3 7 |
| *Queensland 3½% 1950-70 | JJ | 100 | 3 10 0 | 3 10 0 |
| South Africa 3½% 1953-73 | JD | 107 | 3 5 5 | 2 19 10 |
| *Victoria 3½% 1929-49 | AO | 101 | 3 9 4 | — |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after | JJ | 96 | 3 2 6 | — |
| *Croydon 3% 1940-60 | AO | 100 | 3 0 0 | 3 0 0 |
| Essex County 3½% 1952-72 | JD | 106 | 3 6 0 | 3 0 10 |
| Leeds 3% 1927 or after | JJ | 95 | 3 3 2 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 107 | 3 5 5 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 84 | 2 19 6 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 96½ | 3 2 2 | — |
| Manchester 3% 1941 or after | FA | 96xd | 3 2 6 | — |
| *Metropolitan Consd. 2½% 1920-49 | MJSD | 101 | 2 9 6 | — |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 100 | 3 0 0 | 3 0 0 |
| * Do. do. 3% "B" 1934-2003 | MS | 99½ | 3 0 4 | 3 0 4 |
| Do. do. 3% "E" 1953-73 | JJ | 101 | 2 19 5 | 2 18 7 |
| Middlesex County Council 4% 1952-72 | MN | 114 | 3 10 2 | 2 18 10 |
| † Do. do. 4½% 1950-70 | MN | 116 | 3 17 7 | 3 2 11 |
| Nottingham 3% Irredeemable | MN | 96 | 3 2 6 | — |
| Sheffield Corp. 3½% 1968 | JJ | 106½ | 3 5 9 | 3 3 7 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 115½xd | 3 9 3 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 127½xd | 3 10 7 | — |
| Gt. Western Rly. 5% Debenture | JJ | 136½xd | 3 13 3 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 134½xd | 3 14 4 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 134½ | 3 14 4 | — |
| Gt. Western Rly. 5% Preference | MA | 121 | 4 2 8 | — |
| Southern Rly. 4% Debenture | JJ | 113½ | 3 10 6 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 113½ | 3 10 6 | 3 4 10 |
| Southern Rly. 5% Guaranteed | MA | 133½ | 3 14 11 | — |
| Southern Rly. 5% Preference | MA | 121½ | 4 2 4 | — |

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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BENTLEY, HOBBS & MYTTON, F.A.I., Worcester. Tel. 49. Est. 1780.
CATTELL & YOUNG (ALEX. YOUNG, F.A.I.) Worcester St., Kidderminster
R. D. CLARE, F.A.L.P.A., 47, Foregate St., Worcester. Tel. 513.
HENRY COOMBS & SMITH, F.A.I., Worcester. Tel. 35. Est. 1870.
ARTHUR G. GRIFFITHS, F.A.I., 14, Foregate St., Worcester. Est. 1897.
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